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Supreme Court of the United States

OCTOBER TERM, 1950

No. 298

LEO ZITTMAN (WITH WHOM THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK WAS IMPEADED BELOW),
PETITIONER,

J. HOWARD McGRATH, ATTORNEY GENERAL, AS SUCCESSOR
TO THE ALIEN PROPERTY CUSTODIAN

No. 299

LEO ZITTMAN (WITH WHOM THE FEDERAL RESERVE BANK
OF NEW YORK WAS IMPEADED BELOW), PETITIONER,

J. HOWARD McGRATH, ATTORNEY GENERAL, AS SUCCESSOR
TO THE ALIEN PROPERTY CUSTODIAN

No. 314

JOHN F. McCARTHY (WITH WHOM THE CHASE NATIONAL
BANK OF THE CITY OF NEW YORK WAS IMPEADED
BELOW), PETITIONER,

J. HOWARD McGRATH, ATTORNEY GENERAL, AS SUCCESSOR
TO THE ALIEN PROPERTY CUSTODIAN

No. 315

JOHN F. McCARTHY (WITH WHOM THE FEDERAL RESERVE
BANK OF NEW YORK WAS IMPEADED BELOW), PETI-
TIONER,

J. HOWARD McGRATH, ATTORNEY GENERAL, AS SUCCESSOR
TO THE ALIEN PROPERTY CUSTODIAN

No. 324

JOHN J. McCLOSKEY, AS SHERIFF OF THE CITY OF NEW
YORK (WITH WHOM THE CHASE NATIONAL BANK OF
THE CITY OF NEW YORK, ET AL, WERE IMPEADED BE-
LOW), PETITIONER,

J. HOWARD McGRATH, ATTORNEY GENERAL, AS SUCCESSOR
TO THE ALIEN PROPERTY CUSTODIAN

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 2, 1950 (CASES 298-299)
PETITIONS FOR CERTIORARI FILED SEPTEMBER 19, 1950 (CASES 314-315)
PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1950 (CASE 324)

CERTIORARI GRANTED NOVEMBER 13, 1950

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1950

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Response to order to show cause by Federal Reserve Bank

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[fol. 1]

**IN THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT**

**J. HOWARD McGRATH, Attorney General, as successor to the
Alien Property Custodian, Petitioner-Appellee,**

against

CHASE NATIONAL BANK OF THE CITY OF NEW YORK

and

**JOHN J. McCLOSKEY, Jr., as Sheriff of the City of New
York, and LEO ZITTMAN, and JOHN F. MCCARTHY, Re-
spondents-Appellants.**

STATEMENT UNDER RULE XV

This cause was commenced on or about January 30, 1948.

The order to show cause issued pursuant to the petition of Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, petitioner-appellee, was filed on January 30, 1948. The answer of the respondent-appellant, John F. McCarthy, was filed on February 6, 1948. The answer of the respondent-appellant, Leo Zittman, was filed on February 27, 1948. The amended answer of the respondent-appellant, John J. McCloskey, Jr., as Sheriff of the City of New York, was filed on October 20, 1948. The response of the Chase National Bank of the City of New York to the order to show cause was filed on October 20, 1948.

[fol. 2] The respondents have not been arrested nor has any bail been taken or property attached or arrested.

The original parties to this cause are those set forth in the caption hereof, except that Tom C. Clark, as Attorney General, was the original petitioner herein and he was substituted by J. Howard McGrath, who succeeded him as Attorney General since the appeals herein were taken.

The cause came on for hearing on March 5 and March 17, 1948, before the Honorable William Bondy, District Judge.

No question was referred to a Commissioner, Master or Referee.

The final decree was entered on January 20, 1949.

The appeal was taken by the respondent, John F. McCarthy, by notice of appeal filed March 2, 1949; the appeal was taken by the respondent, Leo Zittman, by notice of appeal filed March 7, 1949; and the appeal was taken by the respondent, John J. McCloskey, Jr., as Sheriff of the City of New York, by notice of appeal filed March 18, 1949.

[fol. 3] IN THE UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK

Civ. 44-617

TOM C. CLARK, Attorney General, as successor to the Alien
Property Custodian, Petitioner,

against

CHASE NATIONAL BANK OF THE CITY OF NEW YORK

and

JOHN J. McCLOSKEY, Jr., as Sheriff of the City of New
York, and LEO ZITTMAN, and JOHN F. MCCARTHY, Re-
spondents

ORDER TO SHOW CAUSE—Jan. 23, 1948

Upon the annexed petition of Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, by his attorney, John F. X. McGohey, United States Attorney for the Southern District of New York, sworn to on the 23rd day of January, 1948, and the exhibits annexed thereto, and good cause appearing therefor, it is

Ordered that the respondents herein, Chase National Bank of the City of New York, John J. McCloskey, Jr., Leo Zittman, and John F. McCarthy, respectively, show cause at a motion term of this Court to be held in Room 506, United States Court House, Foley Square, Borough of Manhattan, City of New York, at 10:30 A. M. on the 6th day of February, 1948, or as soon thereafter as counsel may be heard, why a decree should not be entered herein declaring that by virtue of Executive Order No. 6389, as amended and regulations and rulings issued pursuant

[fol. 4] thereto, respondents Zittman and McCarthy, and McCloskey, as Sheriff, obtained no lien or other interest in the Reichsbank-Direktorium or the Deutsche Golddiskontbank accounts, maintained by the respondent Chase National Bank, or in the funds represented thereby, and that by virtue of Vesting-Orders Nos. 7792 and 7870, petitioner is entitled to the entire balances remaining in such accounts, together with all accrued dividends and accumulations, and for such other and further relief as the Court may deem just.

Service of a copy of this order upon the respondents together with copies of the papers upon which it is based, on or before January 30th, 1948, shall be deemed sufficient.

Dated: New York, N. Y., January 23rd, 1948.

John Bright, U. S. D. J.

[fol. 5] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

PETITION

Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, by his attorney, John F. X. McGohey, United States Attorney for the Southern District of New York, prays for an order to show cause against the above-named respondents for the following grounds:

1. This Court has jurisdiction under Section 17 of the Trading with the Enemy Act of October 6, 1917, as amended (40 Stat. 425; United States Code, Title 50, Appendix, Section 17) and under the Federal Declaratory Judgment Act of June 14, 1934, as amended (46 Stat. 955; United States Code, Title 28, Section 400).

2. Respondent Chase National Bank is a national bank with its principal place of business in the City of New York, State of New York, within this District.

3. Respondent John J. McCloskey, Jr., is the duly appointed, qualified and acting Sheriff of the City of New York, and in such capacity is, among other things, the immediate successor of Daniel W. Finn, Jr., as Sheriff of the County of New York, with full power by operation of law to complete the unfinished business of the latter's office; and is a resident of the State of New York.

4
4. Respondent Leo Zittman is, upon information and belief, a resident of the State of New York.

5. Respondent, John F. McCarthy, Jr., is, upon information and belief, a resident of the State of New York.

[fol. 6] 6. For some time prior to June 14, 1941, the Deutsche Reichsbank, the central bank of Germany, a non-resident of the State of New York, maintained a dollar checking account entitled "Reichsbank-Direktorium" with respondent Chase National Bank. On June 14, 1941, with the application of the "freezing" controls of Executive Order No. 8389 (5 Federal Register 1400) to nationals of Germany by Executive Order No. 8785 (6 Federal Register 2897) this checking account was "blocked," the transfer of any interest in the account or the funds represented thereby was proscribed, and all transactions relating thereto were prohibited except as specifically authorized by the Secretary of the Treasury. On June 14, 1941, the balance in this account totalled \$139.00; on December 11, 1941, \$40,401.12; and on April 16, 1942, \$40,592.71.

7. For some time prior to June 14, 1941, the Deutsche Golddiskontbank, a non-resident of the State of New York, maintained a dollar checking account with respondent Chase National Bank. On June 14, with the application of the "freezing" controls of Executive Order No. 8389 (5 Federal Register 1400) to nationals of Germany by Executive Order No. 8785 (6 Federal Register 2897) this checking account was similarly "blocked," and the transfer of any interest in the amount and all other transactions relating thereto were prohibited except as specifically authorized by the Secretary of the Treasury. On June 14, 1941, the balance in this account totalled \$17,132.00, and on December 11, 1941, \$16,604.21.

8. On or about December 11, 1941, respondent Leo Zittman commenced an action in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank and Deutsche Golddiskontbank (action No. 16183-1941). Pursuant to a warrant of attachment procured by respondent Zittman, the Sheriff of the County of New York, then Daniel E. Finn, Jr., on or about December 11, 1941, purported to levy upon said accounts of Deutsche Reichsbank and Deutsche Golddiskontbank by serving certified copies of warrants of attachment upon the respondent Chase National Bank. Thereafter,

following the service by publication and mailing of the summons in said action upon Deutsche Reichsbank and Deutsche Golddiskontbank, judgments by default for \$94,609.37 against Reichsbank and for \$56,023.21 against Golddiskontbank were entered, both in favor of respondent Zittman.

9. No specific authorization for Foreign Funds Control for the acquisition of any interest in the "Reichsbank-Direktorium" or the Deutsche Golddiskontbank accounts or the funds represented thereby was ever obtained by respondent Zittman, nor were licenses ever obtained authorizing respondent Chase National Bank to pay the said judgments out of either of the respective "blocked" accounts (Exhibit A). To date no execution has been had on the judgments.

10. On or about January 20, 1942, respondent John F. McCarthy commenced an action in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank (Action No. 719-1942). Pursuant to a warrant of attachment procured by respondent McCarthy, the Sheriff of the City of New York, respondent John J. McCloskey, Jr., on or about January 21, 1942, purported to levy upon the said account of Deutsche Reichsbank by serving a certified copy of a warrant of attachment upon the respondent Chase National Bank. Following the service by publication and mailing of the summons in said action upon Deutsche Reichsbank, on April 24, 1942, a judgment against Deutsche Reichsbank by default for \$29,660.21 was entered in favor of respondent McCarthy. [fol. 8] 11. On May 29, 1942, the Foreign Funds Control of the United States Treasury Department denied Application No. NY 401383 of respondent McCarthy, for a license authorizing respondent Chase National Bank to pay said judgment out of the said "blocked" account. No other specific authorization from Foreign Funds Control for the acquisition of any interest in the "Reichsbank-Direktorium" account or the funds represented thereby was ever obtained by respondent McCarthy, nor was any license ever obtained authorizing respondent Chase National Bank to pay the said judgment out of the "blocked" account (Exhibit B). To date no execution has been had on the judgment.

12. On October 3, 1946, James M. Markham, then Alien Property Custodian of the United States, executed Vesting Order No. 7792 (11 Federal Register 11777) vesting, among other things, the debt or other obligation owing to Deutsche Reichsbank by respondent Chase National Bank arising out of said dollar checking account entitled "Reichsbank-Direktorium," including any and all rights to demand, enforce and collect the same (Exhibit C). Under letter of November 26, 1946, Donald C. Cook, the then Acting Head of the Office of Alien Property, the successor in interest to the Alien Property Custodian, served a copy of Vesting Order No. 7792 on respondent Chase National Bank and directed it to forward a check to him for the amount represented by the "Reichsbank-Direktorium" account (Exhibit D).

13. On October 14, 1946, James R. Markham, then Alien Property Custodian of the United States, executed Vesting Order No. 7870 (11 Federal Register 13595) vesting the debt or other obligation owing to Deutsche Golddiskontbank arising out of said dollar checking account maintained in its name, including any and all rights to demand, enforce and collect the same (Exhibit E). Un-[fol. 9] der letter of November 18, 1946, the Chief of the Property Division of the Office of Alien Property served a copy of Vesting Order No. 7870 on respondent Chase National Bank and directed it to pay to the Office of Alien Property the debt represented by the said account (Exhibit F).

14. By Executive Order No. 8799, effective October 15, 1946 (11 Federal Register 11981) all authority, rights, privileges, powers, duties and functions vested in the Office of Alien Property Custodian were vested, transferred and delegated to the Attorney General, and all property or interests vested in or transferred to the Alien Property Custodian or seized by him were transferred to the Attorney General.

15. Under date of August 13, 1947, respondent Chase National Bank acknowledged receipt of the letter of November 26, 1946, and of Vesting Order No. 7792 relating to the "Reichsbank-Direktorium" account referred to the attachments thereon by respondents Zittman and McCarthy, and stated that "in view of warrants of attachment above referred to, we are holding in abeyance the matter

of the payment of the vested balances * * * pending receipt of releases issued by the Sheriff of the City of New York of the warrants of attachment now outstanding" (Exhibit G). Respondent Chase National Bank has continued to refuse to comply with Vesting Order No. 7792.

16. Under date of November 26, 1946, respondent Chase National Bank acknowledged receipt of the letter of November 16, 1946, and of Vesting Order No. 7870 relating to the Deutsche Golddiskontbank account, referred to the attachment thereon by respondent Zittman, and stated that "in view of the warrant of attachment above referred to, we are holding in abeyance the matter of the payment of the amount" represented by said account "pending receipt of a release of the warrant of attachment now outstanding" (Exhibit H). Respondent Chase National Bank [fol. 10] has continued to refuse to comply with Vesting Order No. 7870.

17. No previous application has been made for the relief herein requested.

Wherefore, the petitioner prays that an order issue requiring the respondents to show cause why a decree should not be entered declaring that by virtue of Executive Order No. 8389, as amended, and regulations and rulings issued pursuant thereto, respondents Zittman and McCarthy, and McCloskey, as sheriff, obtained no lien or other interest in the "Reichsbank-Direktorium" or the Deutsche Golddiskontbank accounts, or the funds represented thereby, and that by virtue of Vesting Orders Nos. 7792 and 7870 the petitioner is entitled to the entire balances remaining in the "Reichsbank-Direktorium" and Deutsche Golddiskontbank accounts on the books of the respondent Chase National Bank, together with all accrued dividends and accumulations.

John F. X. McGohey, United States Attorney for the Southern District of New York, By Lawrence H. Axman, Assistant United States Attorney, Attorney for Petitioner.

[fol. 11] * EXHIBIT A, ANNEXED TO PETITION

I, John S. Richards, certify that I am the Director of Foreign Funds Control, Treasury Department, Washington, D. C., and as such have custody of the records and files of Foreign Funds Control and that I have caused diligent search to be made of the records and files of Foreign Funds Control, and no record or entry has been found to exist therein that any specific authorization was ever obtained from this office by Leo Zittman for the acquisition of any interest in the Reichsbank-Direktorium or the Deutsche Golddiskontbank accounts maintained by the Chase National Bank of the City of New York or in the funds represented thereby, or that licenses were ever obtained authorizing the Chase National Bank to pay any judgment in favor of said Zittman out of such "blocked" accounts.

John S. Richards

Subscribed and sworn to before me at Washington, D. C. this 15 day of January 1948.

(Seal) Pearl W. Field, (officer administering oath)

My Commission expires June 21, 1948

[f6l. 12] EXHIBIT B, ANNEXED TO PETITION

I, John S. Richards, certify that I am the Director of Foreign Funds Control, Treasury Department, Washington, D. C., and as such have custody of the records and files of Foreign Funds Control, and that I have caused diligent search to be made of the records and files of Foreign Funds Control, and no record or entry has been found to exist therein that any specific authorization was ever obtained from this office by John F. McCarthy for the acquisition of any interest in the Reichsbank-Direktorium account maintained by the Chase National Bank of the City of New York or in the funds represented thereby, or that a license was ever obtained authorizing the Chase National Bank to pay any judgment in favor of said Mc-

Carthy out of such "blocked" account. Our records, however, disclose that on May 29, 1942, this office denied Application No. NY 401383 filed by Henry I. Fillman, as attorney for said McCarthy, dated April 25, 1942 for a license authorizing the Chase National Bank of the City of New York to pay out of the "blocked" account of the Reichsbank a portion of a judgment obtained in favor of said McCarthy in an action in the Supreme Court of the State of New York, Kings County, entitled, "John F. McCarthy, plaintiff, against Reichsbank, defendant."

John S. Richards

Subscribed and sworn to before me at Washington, D. C. this 15 day of January 1948.

Pearl W. Field (officer administering oath)

My Commission expires June 21, 1948

[fol. 13]

EXHIBIT C, ANNEXED TO PETITION
UNITED STATES OF AMERICA

Office of Alien Property Custodian

Vesting Order Number 7792

Re: Bank account owned by Deutsche Reichsbank

Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding:

1. That Deutsche Reichsbank, the last known address of which is Berlin, Germany, is a corporation, organized under the laws of Germany, and which has or, since the effective date of Executive Order No. 8389, as amended, has had its principal place of business in Germany and is a national of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation owing to Deutsche Reichsbank, by The Chase National Bank of the City of New York, 18 Pine Street, New

York, New York, arising out of a dollar checking account, entitled Reichsbank-Direktorium, and any and all rights to demand, enforce and collect the same,

- b. That certain debt or other obligation owing to Deutsche Reichsbank, by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, arising out of a dollar checking account, entitled Deutsche Reichsbank, Westpapierabteilung, FS62971, and any and all rights to demand, enforce and collect the same, and

[fol. 14] c. That certain debt or other obligation owing to Deutsche Reichsbank, by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, arising out of a dollar checking account, entitled General Ruling No. 6 Account, Deutsche Reichsbank, Westpapierabteilung F62971, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country;

And determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany);

And having made all determinations and taken all action required by law, including appropriate consultation and certification, and deeming it necessary in the national interest,

Hereby Vests in the Alien Property Custodian the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. This Order shall not be deemed to constitute an admission by the Alien Property Custodian of the lawfulness of,

or acquiescence in, or licensing of, any set-offs, charges or deductions, nor shall it be deemed to limit the power [fol. 15] of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when it should be determined to take any one or all of such actions.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Executed at Washington, D. C., on October 3, 1946.
(Official Seal)

(Signed) James E. Markham, James E. Markham,
Alien Property Custodian.

I hereby certify that the within is a true and correct copy of the original paper on file in this office.

For the Attorney General

David L. Bazelon, Assistant Attorney General
Director, Office of Alien Property

By Loyola M. Blanton, Assistant Secretary for
Records

[fol. 16] EXHIBIT D, ANNEXED TO PETITION

F 28-1282-E-12, V. O. No. 7792, DCC:JJE:EJC

November 26, 1946

The Chase National Bank of the City of New York, 18
Pine Street, New York City, New York

Gentlemen:

Enclosed is a certified copy of Vesting Order No. 7792 executed by the Alien Property Custodian on October 3, 1946, vesting in himself as Alien Property Custodian "Bank Account owned by Deutsche Reichsbank."

By Executive Order 9788, effective October 15, 1946, the Office of Alien Property Custodian was terminated and all authority, rights, privileges, powers, duties and functions

vested in such office or in the Alien Property Custodian, were transferred to and vested in the Attorney General of the United States to be administered by him and such officers and agencies of the Department of Justice as he might designate and all property or interests vested in or transferred to the Alien Property Custodian or seized by him, and all proceeds thereof, which were held or administered by him on the effective date of this order were transferred to the Attorney General. (11 F. R. 11981)

Effective, October 15, 1946, the Attorney General issued his Order No. 3732, Supplement 19, establishing in the Department of Justice the "Office of Alien Property" and delegating to such office all power and authority vested in or transferred to him by Executive Order 9788. (Title 28 §51.81 (a), 11 F. R. 12045)

Under date of October 17, 1946, the Acting Head of the Office of Alien Property issued regulations and delegations of final authority, approved by the Attorney General, [fol. 17] which provide, among other things, "(b) All Special Regulations, * * * Vesting Orders, * * * instructions, directions, * * * demands, authorizations, notices and forms and all other instruments whatsoever issued by or under the authority of the Alien Property Custodian are hereby affirmed, ratified and continued in effect according to their terms * * *. In any such instrument any provision having a prospective effect shall be construed as if any references therein to the Alien Property Custodian were a reference to the Attorney General and any reference therein to the Office of Alien Property Custodian were a reference to the Office of Alien Property, unless the context otherwise requires.

"(c) Any instrument which might lawfully be issued by or under the authority of the Attorney General shall not be invalid for the reason that it contains the designation 'Alien Property Custodian' or 'Office of Alien Property Custodian' or the name 'Leo T. Crowley' or 'James E. Markham' but shall be construed as though it contained the designation of the Attorney General or of the Office of Alien Property, as the case may be, unless the context otherwise requires." (11 F. R. 12436)

For the purpose of identifying the account of the Deutsche Reichsbank on the books and records of the Of-

Office of Alien Property, Account No. 28-18101 has been assigned.

With reference to that certain debt or other obligation owing to Deutsche Reichsbank by The Chase National Bank of the City of New York, arising out of a dollar checking account entitled Reichsbank-Direktorium, more fully described in subparagraph 2a of Vesting Order No. 7792, the balance of which was reported as of September 10, 1945, to amount to \$40,698.02, you are authorized and directed to forward your check for that amount, plus any accretions thereto, to the Office of Alien Property, Department of Justice, Washington 25, D. C., attention of the Property Division.

With reference to that certain debt or other obligation owing to Deutsche Reichsbank by The Chase National Bank of the City of New York, arising out of a dollar checking account entitled Deutsche Reichsbank, more fully described in subparagraph 2b of Vesting Order No. 7792, and reported to amount to \$68.50, as of September 10, 1945, you are authorized and directed to forward your check for that amount, plus any accretions thereto, to the Office of Alien Property, Department of Justice, Washington 25, D. C., attention of the Property Division.

As to that certain debt or other obligation owing to Deutsche Reichsbank by The Chase National Bank of the City of New York, arising out of a dollar checking account entitled General Ruling No. 6 Account, Deutsche Reichsbank, Westpapierabteilung F 62971, more fully described in subparagraph 2c of Vesting Order No. 7792, reported on September 10, 1945 as amounting to \$75.15, you are authorized and directed to forward your check for that amount, plus any accretions thereto, to the Office of Alien Property, Department of Justice, Washington 25, D. C., attention of the Property Division.

All checks are to be made payable to the order of the "Attorney General of the United States, Account No. 28-18101."

Please sign the acknowledgment on the attached copy of this letter and return the same in the franked addressed envelope enclosed herein for that purpose.

Very truly yours, Donald C. Cook, Acting Head, Office of Alien Property.

[fol. 19] EXHIBIT E, ANNEXED TO PETITION

UNITED STATES OF AMERICA

Office of Alien Property Custodian

Vesting Order Number 7870

Re: Bank account owned by Deutsche Golddiskontbank

Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding:

1. That Deutsche Golddiskontbank, the last known address of which is Berlin, Germany, is a corporation, organized under the laws of Germany, and which has or, since the effective date of Executive Order No. 8389, as amended, has had its principal place of business in Germany and is a national of a designated enemy country (Germany);

2. That the property described as follows:

That certain debt or other obligation owing to Deutsche Golddiskontbank, by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, arising out of a dollar checking account, entitled Deutsche Golddiskontbank, and any and all rights to demand, enforce and collect the same,

is the property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country;

[fol. 20] And determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany);

And having made all determinations and taken all action required by law, including appropriate consultation and certification, and deeming it necessary in the national interest,

Hereby Vests in the Alien Property Custodian the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. This Order shall not be deemed to constitute an admission by the Alien Property Custodian of the lawfulness of, or acquiescence in, or licensing of, any set-offs, charges or deductions, nor shall it be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when it should be determined to take any one or all of such actions.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Executed at Washington, D. C., on October 14, 1946.

(Official Seal)

Signed) James E. Markham, Alien Property Custodian.

[fol. 21] I hereby certify that the within is a true and correct copy of the original paper on file in this office.

For the Attorney General, David L. Bazelon, Assistant Attorney General, Director, Office of Alien Property.

By Loyola M. Blanton, Assistant Secretary for Records.

[fol. 22] EXHIBIT F, ANNEXED TO PETITION

Copy. F-28-855 E-2, V. O. No. 7870, Section 2(c), THC:
FAM:sk

OFFICE OF ALIEN PROPERTY
Department of Justice
120 Broadway

New York City 5, New York
November 18, 1946

The Chase National Bank of the City of New York, 18 Pine
Street, New York City.

Re: Bank account owned by Deutsche Golddiskontbank

Gentlemen:

Enclosed is a certified copy of Vesting Order No. 7870, executed by the Alien Property Custodian on October 14, 1946, vesting in himself as Alien Property Custodian that certain dollar checking account with The Chase National Bank of the City of New York, 18 Pine Street, New York City, entitled Deutsche Golddiskontbank, Berlin, Germany.

By executive Order 9788, effective October 15, 1946, the Office of Alien Property Custodian was terminated and all authority rights, privileges, powers, duties and functions vested in such office or in the Alien Property Custodian were transferred to and vested in the Attorney General of the United States to be administered by him and such officers and agencies of the Department of Justice as he might designate and all property or interests vested in or transferred to the Alien Property Custodian or seized by [fol. 23] him, and all proceeds thereof, which were held or administered by him on the effective date of this order were transferred to the Attorney General.

(11 F.R. 11981)

Effective October 15, 1946, the Attorney General issued his Order No. 3732, Supplement 19, establishing in the Department of Justice the "Office of Alien Property" and delegating to such office all power and authority vested in or transferred to him by Executive Order 9788 (Title 28 §51.81 (a), 11 F. R. 12045).

Under date of October 17, 1946, the Acting Head of the Office of Alien Property issued regulations and delegations

of final authority, approved by the Attorney General, which provide, among other things, "(o) All Special Regulations, * * * Vesting Orders, * * * instructions, directions, * * * demands, authorizations, notices and forms and all other instruments whatsoever issued by or under the authority of the Alien Property Custodian are hereby affirmed, ratified and continued in effect according to their terms * * *. In any such instrument any provision having a prospective effect shall be construed as if any reference therein to the Alien Property Custodian, were a reference to the Attorney General and any reference therein to the Office of Alien Property Custodian were a reference to the Office of Alien Property, unless the context otherwise requires.

"(c) Any instrument which might lawfully be issued by or under the authority of the Attorney General shall not be invalid for the reason that it contains the designation 'Alien Property Custodian' or 'Office of Alien Property Custodian' or the same 'Leo T. Crowley' or 'James E. Markham' but shall be construed as though it contained the designation of the Attorney General or of the Office of Alien Property, as the case may be, unless the context otherwise requires" (500.41 of the Rules of the Office of Alien Property: 11 F. R. 12436).

[fol. 24] The records of this office indicate that this account contained a balance of \$16,604.21 as of September 10, 1945.

For the purpose of identifying the account on the books and records of the Office of Alien Property, Account No. 28-18541 has been assigned.

You are hereby authorized and directed to pay to the Office of Alien Property, 120 Broadway, New York, N. Y., attention Property Division, the above described debt or other obligation, including any interest due thereon and any accretions thereto. The check should be made payable to the order of the "Attorney General of the United States, Account No. 28-18541," and should be accompanied by a complete statement in duplicate showing all interests and accretions to, and all charges against the account since September 10, 1946, to the present date.

Please sign the acknowledgment on the attached copy of this letter and return the same in the franked addressed envelope enclosed herein for that purpose.

Very truly yours, /s/ Thomas H. Creighton, Jr.,
Chief, Property Division.

Encl.

Receipt is acknowledged of the original of this demand and a certified copy of Vesting Order No. 7870 this 20th day of November, 1946.

(Signature illegible) John Prentice, 2nd Vice President.

[fol. 25] EXHIBIT G, ANNEXED TO PETITION

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK
New York

Pine Street Corner of Nassau, New York 15, N. Y.

August 13, 1947

In Replying Please Refer to 1-23

Office of Alien Property, Department of Justice, Washington 25, D. C.

Re: File No. F 28-1282-E-12

V. O. No. 7792, DCC:JJE:AFW:MJC

Gentlemen:

In some unaccountable manner your letter of November 26, 1946 enclosing a certified copy of Vesting Order No. 7792 was mislaid and has just come to light.

We now acknowledge receipt of your letter of November 26, 1946 enclosing a certified copy of Vesting Order No. 7792 executed by the Alien Property Custodian on October 3, 1946 and vesting in the Attorney General of the United States

- (a) That certain debt or other obligation owing to Deutsche Reichsbank, by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, arising out of a dollar checking account,

entitled Reichsbank-Direktorium, and any and all rights to demand, enforce and collect the same.

- (b) That certain debt or other obligation owing to Deutsche Reichsbank, by The Chase National Bank [fol. 26] of the City of New York, 18 Pine Street, New York, New York, arising out of a dollar checking account, entitled Deutsche Reichsbank, Wertpapierabteilung, FS62971, and any and rights to demand, enforce and collect the same, and
- (c) That certain debt or other obligation owing to Deutsche Reichsbank, by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, arising out of a dollar checking account, entitled General Ruling No. 6 Account, Deutsche Reichsbank, Wertpapierabteilung F62971, and any and all rights to demand, enforce and collect the same.

On December 11, 1941 we were served with a Warrant of Attachment in an action in the Supreme Court, Kings County, by Leo Zittman, Plaintiff, vs. Reichsbank and Deutsche Golddiskontbank, Defendants, to recover the sum of \$68,940. with interest, against the defendant Reichsbank and \$40,230. with interest, against the defendant Deutsche Golddiskontbank, together with costs and expenses in each instance and on April 16, 1942 we were served with a Warrant of Attachment in an action in the Supreme Court, Kings County by John F. McCarthy, Plaintiff, vs. Reichsbank, Defendant, to recover the sum [fol. 27] of \$24,810. plus interest, costs and expenses.

At the time of the service of the first Warrant of Attachment on December 11, 1941 in suit of Leo Zittman, the account of Reichsbank-Direktorium reflected a balance of \$40,401.12 which we reported to the Sheriff subject to Executive Order 8389 as amended and to such other Orders and Decrees as may be applicable thereto and as of April 16, 1942, the date on which the second Warrant of Attachment was served upon us in suit of John F. McCarthy, the account of the Reichsbank-Direktorium reflected a balance of \$40,592.71 which included the sum of \$40,401.12 previously reported to the Sheriff under the Leo Zittman Attachment, or an increase of \$191.59.

We certified to the Sheriff pursuant to the Warrant of

Attachment served in the John F. McCarthy suit, a balance of \$40,592.71 in the account of the Reichsbank-Direktorium subject to Executive Order 8389 as amended and to such other Orders and Decrees as may be applicable thereto and in our Return on the John F. McCarthy Attachment, referred to the service upon us under date of December 11, 1941 of a prior Warrant of Attachment in suit of Leo Zittman.

The accounts mentioned in paragraphs B and C of the Vesting Order were set up to handle the income from securities which we held in custody for Deutsche Reichsbank, Wertpapier, and in both of our Returns we included a statement to the effect that we were holding in custody certain securities set forth in a photostatic schedule enclosed with each of our Returns for the account of the Deutsche Reichsbank, Wertpapier, subject to Executive Order 8389 as amended and to such other Orders and Decrees as may be applicable thereto in that the balances in the dollar account of the Reichsbank-Direktorium were inadequate to satisfy the attaching creditors' claims.

We were served with serial Extension Orders preserving the Sheriff's rights to commence actions to reduce to possession the property attached, to the respective dates of March 11, 1948 and April 22, 1948 in the Leo Zittman and John F. McCarthy actions.

In view of the Warrants of Attachment above referred to, we are holding in abeyance the matter of the payment of the vested balances in the form of our check to the order of the "Attorney General of the United States, Account No. 28-18101" pending receipt of Releases issued by the Sheriff of the City of New York of the Warrants of Attachment now outstanding.

We wish to apologize for the delay in acknowledging the letter under discussion and regret any inconvenience the oversight may have occasioned you.

Yours very truly, /s/ Robert V. Wilson, Assistant
Cashier.

EGH:M

[fol. 29] EXHIBIT H, ANNEXED TO PETITION .

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK
New York

November 26, 1946

Mr. Thomas H. Creighton, Jr., Chief, Property Division,
Office of Alien Property, 120 Broadway, New York 5,
N. Y.

Dear Sir:

Reference: F-28-855 E-2 V. G. No. 7870

Section 2(c) THC:FAM:sk

We have for acknowledgment your letter of November 18th enclosing certified copy of Vesting Order No. 7870 executed by the Alien Property Custodian on October 14, 1946 vesting in himself as Alien Property Custodian:

"That certain debt or other obligation owing to Deutsche Golddiskontbank, by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, arising out of a dollar checking account, entitled Deutsche Golddiskontbank, and any and all rights to demand, enforce and collect the same."

On December 11, 1941 we were served with a Warrant of Attachment in an action in the Supreme Court, Kings County by Leo Zittman, Plaintiff, vs. Reichsbank and Deutsche Golddiskontbank, Defendants, to recover the [fol. 30] sum of \$68,940. with interest against the Defendant, Reichsbank and \$40,230. with interest against the Defendant, Deutsche Golddiskontbank.

The credit balance in the Dollar account of Deutsche Golddiskontbank at the time of the service of the Warrant of Attachment was \$16,604.21 and we so advised the Sheriff of the City of New York under date of March 19, 1942. The Sheriff, of course, was informed that the account was subject to Executive Order No. 8389 as amended. Extension Orders extending the time within which the Sheriff shall reduce to possession the funds attached have been filed from time to time and the last Extension Order which was served February 18, 1946 carried an expiry date of March 11, 1947.

In view of the Warrant of Attachment above referred to, we are holding in abeyance the matter of the payment of the amount of \$16,604.21 in the form of our check to the order of the "Attorney General of the United States, Account No. 28-18541" pending receipt of a release of the Warrant of Attachment now outstanding.

For your information we, on or about January 30, 1946 received a letter from Mr. Henry Mann, 63 Wall Street, New York City, claiming an amount of \$1,290. against the funds of Deutsche Golddiskontbank, Berlin on our books in connection with which we wrote Mr. James E. Markham, Alien Property Custodian, Washington, D. C. under date of February 1, 1946.

Yours very truly, /s/ John Prentice, Second Vice
Président.

[fol. 31] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

RESPONSE TO ORDER TO SHOW CAUSE BY THE CHASE NATIONAL
BANK

The respondent, The Chase National Bank of the City of New York, for its response to the order to show cause made herein by Honorable John Bright, United States District Judge, dated January 23, 1948, directing the respondents herein to show cause why a decree should not be entered herein declaring that by virtue of Executive Order No. 8389, as amended, and regulations and rulings issued pursuant thereto, respondents Zittman and McCarthy and McCloskey, as Sheriff, obtained no lien or other interest in the Reichsbank-Direktorium or the Deutsche Golddiskontbank accounts maintained by the respondent Chase National Bank, or in the funds represented thereby, and that by virtue of Vesting Orders Nos. 7792 and 7870 petitioner is entitled to the entire balances remaining in such accounts, together with all accrued dividends and accumulations, and for such other and further relief as the court may deem just, by its attorneys Milbank, Tweed, Hope & Hadley, respectively shows as follows on information and belief:

Respondent, The Chase National Bank of the City of

New York (hereinafter called the Chase) for its answer to the petition herein:

(1) Denies each and every allegation of fact set forth in paragraph 6 thereof except that it admits (a) that for sometime prior to June 14, 1941, The Deutsche Reichsbank, the central bank of Germany, a non-resident of the State of New York, maintained a dollar checking account entitled "Reichsbank-Direktorium" with the Chase; (b) that on June 14, 1941, there was issued and was applicable [fol. 32] to the said account Executive Order No. 8785 (6 Federal Register 2897) amending Executive Order No. 8389 (5 Federal Register 1400), for the contents and purported effect of which orders reference is hereby had to the orders themselves with the same force and effect as if they were here set forth at length; (c) that on June 14, 1941, the balance in the current dollar checking account entitled "Reichsbank-Direktorium" totaled \$139.00; on December 11, 1941, \$40,401.12; and on April 16, 1942, \$40,592.71.

(2) Denies each and every allegation of fact set forth in paragraph 7 thereof except that it admits (a) that for some time prior to June 14, 1941, the Deutsche Golddiskontbank, a German bank and a non-resident of the State of New York, maintained a dollar checking account with the Chase; (b) that on June 14, 1941, there was issued and was applicable to the said account Executive Order No. 8785 (6 Federal Register 2897), amending Executive Order No. 8389 (5 Federal Register 1400), for the contents and purported effect of which orders reference is hereby had to the orders themselves with the same force and effect as if they were here set forth at length; and (c) that on June 14, 1941, the balance in the said dollar checking account of Deutsche Golddiskontbank totaled \$17,132.00 and on December 11, 1941, \$16,604.21.

(3) With reference to paragraph 8, admits and alleges that on December 11, 1941, pursuant to a warrant of attachment procured by respondent, Zittman, the Sheriff of the County of New York, then Daniel E. Finn, Jr., levied upon the said accounts of Deutsche Reichsbank and Deutsche Golddiskontbank by serving a certified copy of the warrant of attachment upon the Chase.

(4) Denies that it has any knowledge or information

sufficient to form a belief as to the truth of the allegations [fol. 33] set forth in paragraph 9 thereof, except that it (a) admits that no license was ever exhibited to it authorizing it to make a payment or transfer of credit out of either of the said accounts to or on behalf of respondent, Zittman, or to pay the judgments referred to in paragraph 8 of the petition herein, and alleges that no such payment or transfer of credit has been made by it; and (b) admits that no execution has been had against the said accounts on the said judgments.

(5) With respect to paragraph 10 thereof, denies that the levy by service upon the Chase of a certified copy of a warrant of attachment secured by respondent, McCarthy, took place on January 21, 1942, and admits and alleges that on April 16 1942, pursuant to a warrant of attachment procured by respondent, McCarthy, the Sheriff of the City of New York, John J. McCloskey, Jr., levied on the said account of Deutsche Reichsbank by serving a certified copy of the warrant of attachment upon the Chase.

(6) Denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations, set forth in paragraph 11 thereof, except that it (a) admits that no license was ever exhibited to it authorizing it to make a payment or transfer of credit out of the said account in the name of "Reichsbank-Direktorium" to or on behalf of respondent, McCarthy, or to pay the judgment referred to in paragraph 10 of the petition herein; and alleges that no such payment or transfer of credit has been made by it; and (b) admits that no exception has been had against the said account on the said judgment.

(7) Denies each and every allegation of fact set forth in paragraph 12 thereof, except that it admits (a) that under date of October 3, 1946, James E. Markham, then [fol. 34] Alien Property Custodian of the United States, executed Vesting Order No. 7792 (11 Federal Register 11777), for the contents and purported effect of which reference is hereby made to the said order with the same force and effect as if it were here set forth at length, and (b) that a letter dated November 26, 1946, as set forth in Exhibit D attached to the petition, from Donald C. Cook, the then acting head of the Office of Alien Property, the

successor in interest to the Alien Property Custodian, enclosing a copy of Vesting Order No. 7792, was forwarded to the Chase, for the contents and purported effect of which letter reference is hereby made thereto with the same force and effect as if it were here set forth at length. The Chase alleges that the effective date of the said Vesting Order is October 9, 1946.

(8) Denies each and every allegation of fact set forth in paragraph 13 thereof, except that it admits (a) that under date of October 14, 1946, James E. Markham, then Alien Property Custodian of the United States, executed Vesting Order No. 7870 (11 Federal Register 13595) for the contents and purported effect of which reference is hereby had to the said order with the same force and effect as if it were here set forth at length; (b) that a letter dated November 18, 1946, as set forth in Exhibit F attached to the petition, from the Chief of the Property Division of the Office of Alien Property, enclosing a copy of Vesting Order No. 7870, was forwarded to the Chase, for the contents and purported effect of which reference is hereby made thereto with the same force and effect as if it were here set forth at length. The Chase alleges that the effective date of the said Vesting Order is November 18, 1946.

(9) Denies each and every allegation of fact set forth in paragraph 15 thereof, except that it admits that under [fol. 35] date of August 13, 1947, it sent to the Office of Alien Property the letter set forth in Exhibit G attached to the petition herein.

(10) Denies each and every allegation of fact set forth in paragraph 16 thereof, except that it admits that under date of November 26, 1946, it sent to the Office of Alien Property the letter set forth in Exhibit H attached to the petition herein.

The respondent Chase, by way of further defense, further shows:

First Defense

(11) On December 11, 1941, in the action in the Supreme Court of the State of New York entitled "Leo Zittman, Plaintiff, against Reichsbank and Deutsche Gold-diskontbank, Defendants," Charles J. Dodd, a Justice of the Supreme Court of the State of New York, on the ap-

plication of the said Zittman, duly and regularly issued a warrant of attachment, pursuant to the provisions of the Civil Practice Act of the State of New York, directed to the Sheriff of any county of New York State, commanding that the Sheriff attach and safely keep so much of the property of the defendant, Reichsbank, as would satisfy the said Zittman's demand in the said action of \$68,940, with accrued interest thereon, and costs and expenses, and so much of the property of the defendant, Deutsche Golddiskontbank, as would satisfy said Zittman's demand in said action for \$40,230 with accrued interest thereon, and costs and expenses. On December 11, 1941, Daniel E. Finn, Jr., Sheriff of the County of New York, by Deputy Sheriff, Michael Cuzzo, duly and regularly executed the said warrant of attachment and levied upon the accounts of the said Reichsbank and Deutsche Golddiskontbank [fol. 36] with the Chase, in the manner prescribed by the Civil Practice Act, by serving upon the Chase a certified copy of said warrant of attachment (a copy of which, together with a copy of the certificate of the said Sheriff thereto annexed, is attached hereto as Exhibit A).

(12) Pursuant to the said warrant of attachment and upon demand of the Sheriff, the Chase made certification to the Sheriff under date of March 19, 1942 (a copy of which certification is attached hereto as Exhibit B), that there was at the time of service of the warrant a credit balance of \$40,401.12 in a deposit account in the name of Reichsbank-Direktorium, and a credit balance of \$16,604.21 in a deposit account in the name of Deutsche Golddiskontbank; that certain securities were held by the Chase as custodian for Deutsche Reichsbank Wertpapier, and certain securities were held by the Chase as custodian for Deutsche Golddiskontbank, but that the Chase was not informed of what interest Deutsche Reichsbank Wertpapier or Deutsche Golddiskontbank had in the securities and/or the proceeds thereof held for the respective accounts; and that certain collection items on which payment had been refused were also held by the Chase as custodian for Reichsbank-Direktorium. The Chase further reported that the above funds, securities and other instruments were held subject to Executive Order No. 8389 as amended.

(13) The Chase has not at any time made any payment

or transferred, paid or delivered any property to the said Sheriff, or any successor thereof, or to any other party pursuant to the said warrant of attachment.

(14) The Chase has from time to time been duly and regularly served, in accordance with provisions of the Civil Practice Act, with certified copies of court orders of the Supreme Court of the State of New York, County [fol. 37] of Kings, in the above-mentioned action of Zittman v. Reichsbank and Deutsche Golddiskontbank, extending the time within which the Sheriff might commence an action or special proceeding to reduce to custody the personal property and to collect, receive and enforce the debts, effects and things in action attached by him: to wit, an order dated March 5, 1942, extending the said time to and including June 11, 1942; an order dated June 8, 1942, extending the said time to and including September 11, 1942; an order dated September 5, 1942, extending the said time to and including December 11, 1942; an order dated December 7, 1942, extending the said time to and including March 11, 1943; an order dated March 9, 1943, extending the said time to and including March 11, 1944; an order dated February 9, 1944, extending the said time to and including March 11, 1945; an order dated January 13, 1945, extending the said time to and including March 11, 1946; an order dated January 28, 1946, extending the said time to and including March 11, 1947; an order dated February 5, 1947, extending the said time to and including March 11, 1948; and an order dated January 27, 1948, extending the said time to and including March 11, 1949.

(15) The above-mentioned warrant of attachment in the action entitled "Leo Zittman, Plaintiff, against Reichsbank and Deutsche Golddiskontbank, Defendants," has never been vacated or modified, nor has the attachment thereunder been released or otherwise discharged.

(16) On January 21, 1942, in the action in the Supreme Court of the State of New York entitled "John F. McCarthy, Plaintiff, against Reichsbank, Defendant," Meier Steinbrink, a Justice of the Supreme Court of the State of New York, on the application of the said McCarthy, duly and regularly issued a warrant of attachment pursuant to the provisions of the Civil Practice Act of the [fol. 38] State of New York directed to the Sheriff of the City of New York, commanding that the Sheriff attach and

safely keep so much of the property of the defendant, Reichsbank, as would satisfy the said McCarthy's demand in the said action of \$24,810, with accrued interest thereon from May 30, 1939, and costs and expenses. On April 16, 1942, John J. McCloskey, Jr., Sheriff of the City of New York, by Deputy Sheriff Frances Bauman, duly and regularly executed the said warrant of attachment and levied upon the accounts of the said Reichsbank with the Chase, in the manner prescribed by the Civil Practice Act, by serving upon the Chase a certified copy of said warrant of attachment (a copy of which, together with a copy of the certificate of the said Sheriff thereto annexed, is attached hereto as Exhibit C).

(17) Pursuant to the said warrant of attachment and upon demand of the Sheriff, the Chase made certification to the Sheriff under date of April 21, 1942 (a copy of which certification is attached hereto as Exhibit D), that there was at the time of service of the warrant a credit balance of \$40,592.71 in a deposit account in the name of Reichsbank-Direktorium; that certain securities were held by the Chase as custodian for Deutsche Reichsbank Wertpapier, but that the Chase was not informed of what interest Deutsche Reichsbank Wertpapier had in the securities and/or the proceeds thereof held for its account; and that certain collection items on which payment had been refused were also held by the Chase as custodian for Reichsbank-Direktorium. The Chase further reported that the above funds, securities and other instruments were held subject to Executive Order No. 8389 as amended, and that there had previously been served upon the Chase a warrant of attachment in *Zittman v. Reichsbank and Deutsche Golddiskontbank*.

[fol. 39] (18) The Chase has not at any time made any payment or transferred, paid or delivered any property to the said Sheriff, or any successor thereof, or to any other party, pursuant to the said warrant of attachment.

(19) The Chase has from time to time been duly and regularly served, in accordance with provisions of the Civil Practice Act, with certified copies of court orders of the Supreme Court of the State of New York, County of Kings, in the above-mentioned action of *McCarthy v. Reichsbank*, extending the time within which the Sheriff

might commence an action or special proceeding to reduce to custody the personal property and to collect, receive and force the debts, effects and things in action attached by him; to wit, an order dated April 17, 1942, extending the said time to and including July 21, 1942; an order dated July 16, 1942, extending the said time to and including October 21, 1942; an order dated October 16, 1942, extending the said time to and including January 21, 1943; an order dated January 18, 1943, extending the said time to and including April 21, 1943; an order dated April 16, 1943, extending the said time to and including April 21, 1944; an order dated April 12, 1944, extending the said time to and including April 21, 1945; an order dated April 11, 1945, extending the said time to and including April 22, 1946; an order dated April 15, 1946, extending the said time to and including April 22, 1947; and an order dated April 15, 1947, extending the said time to and including April 22, 1948.

(20) The above-mentioned warrant of attachment in the action entitled "John F. McCarthy, Plaintiff, against Reichsbank, Defendant," has never been vacated or modified, nor has the attachment thereunder been released or otherwise discharged.

[fol. 40] (21) Section 917 of the New York Civil Practice Act, as in effect on December 11, 1941 and at all times since that date, after providing for levy under a warrant of attachment where the property levied on consists of a demand (with exceptions not here pertinent) by leaving a certified copy of the warrant with the person against whom the demand exists, provides that

"And such person so served with a certified copy of a warrant of attachment is forbidden to make or suffer, any transfer or other disposition of, or interfere with, any such property or interest therein so levied upon, or pay over or otherwise dispose of any debt so levied upon, or sell, assign or transfer any right so levied upon, to any person, or persons, other than the sheriff serving the said warrant until ninety days from the date of such service, except upon direction of the sheriff or pursuant to an order of the court."

(22) Section 922 of the New York Civil Practice Act, as in effect on December 11, 1941 and at all times thereafter until September 1, 1945, provided:

"* * * 1. In the event that the person owing any debt to the defendant, or holding property, effects or things in action of the defendant or interest therein subject to attachment, on which a levy under a warrant has been made, as in this act provided, shall fail or refuse to deliver such personal property attached, or to pay or assign to the sheriff the said debt, effect or thing in action, or interest therein the sheriff may, and if indemnified by the plaintiff as hereinafter provided, must, within ninety days after the service of the certified copy of the warrant on such person commence an action or special proceeding to reduce to his actual custody [fol. 41] all such personal property capable of manual delivery, and to collect, receive and enforce all debts, effects and things in action attached by him, and may maintain any such action or special proceeding in his name or in the name of the defendant for that purpose. * * *

"The time within which such action or special proceeding, as hereinbefore provided, may be commenced shall be extended beyond the period of ninety days from the date of the service of the said warrant only by order of the court for good cause shown. Such an order may be granted upon *ex parte* application of plaintiff. An order thus extending the time within which such an action or special proceeding may be commenced shall be effective to continue all duties and liabilities of any person on whom a warrant of attachment in the action has been served, provided that a certified copy of the said order is, prior to the expiration of the said ninety days, served upon said person."

Effective September 1, 1945, the above quoted provisions were amended by a change in the final sentence quoted so that the sentence would read:

"An order thus extending the time within which such an action or special proceeding may be com-

menced shall be effective to continue all duties and liabilities of any person on whom a warrant of attachment in the action has been served, provided that a certified copy of the said order is served upon said person prior to the expiration of the said ninety days, or prior to the expiration of the time [fol. 42] for commencing such an action or special proceeding as further extended."

The purpose and effect of the above amendment was to codify the previous court interpretation of the statute. As thus amended the above-quoted provisions have been in effect at all times since September 1, 1945.

(23) Transfer of funds contrary to Section 917 of the New York Civil Practice Act constitutes under the law of New York a civil contempt of court punishable accordingly. Under Section 753 of the Judiciary Law such a civil contempt may be punished by fine and imprisonment.

Second Defense

(24) Vesting Order Nos. 7792 and 7870 as presently attempted to be applied are void as contrary to the provisions of the Trading with the Enemy Act and/or the executive orders, rules and regulations issued pursuant thereto.

Third Partial Defense

(25) Under date of December 14, 1939, the Chase for the account and risk of Reichsbank Direktorium agreed with the Irving Trust Company of New York to hold the said trust company harmless from any and all consequences arising from the payment of a draft of the said trust company without presentment of original and duplicate of the draft. In consideration of the said agreement the said trust company paid to the Chase, and the Chase credited to the deposit account in the name of Reichsbank Direktorium, \$2,211.70, the dollar equivalent of the said draft at the rate of 40c. The amount involved [fol. 43] in the said indemnity agreement is \$2,211.70. The duplicate of the item thus paid being still outstanding, the Irving Trust Company has declined to release the Chase from the said indemnity agreement and the obligation of the Chase upon the same is still in effect.

(26) The Deutsche Golddiskontbank is presently indebted to the Chase for custodian fees accruing, in respect of its custody account with the Chase, since January 1, 1942, the amount thereof accrued as of January 29, 1948, being \$152.01, and such fees accruing thereafter at the rate of \$25 per annum. The Chase asserts a lien against the property held by it for account of Deutsche Golddiskontbank for such custodian fees.

Wherefore, the respondent, The Chase National Bank of the City of New York, prays that the order prayed for by the petitioner be denied and prays such other and further relief as the Court may deem just.

Timothy N. Pfeiffer, a Partner of Milbank, Tweed, Hope & Hadley, Attorneys for Respondent, The Chase National Bank of the City of New York, 15 Broad Street, New York 5, N. Y.

[fol. 44] EXHIBIT A ANNEXED TO RESPONSE

THE PEOPLE OF THE STATE OF NEW YORK, TO THE SHERIFF
OF ANY COUNTY OF NEW YORK STATE:

Whereas an application has been made to the undersigned by the plaintiff, Leo Zittman, for a warrant of attachment against the property of the defendant, Reichsbank, and the defendant, Deutsche Golddiskontbank, and a summons having been duly issued in this action, and the plaintiff having satisfactorily shown by the affidavits of Leo Zittman, duly verified the 11th day of December, 1941, and of Rudolphe G. Maron, duly verified the 10th day of December, 1941, that the action is brought to recover for a sum of money only, as damages, for unjust enrichment, that a cause of action therefor exists against the defendant, Reichsbank, and in favor of the plaintiff for the sum of \$68,940, with accrued interest thereon, that a cause of action therefor exists against the defendant, Deutsche Golddiskontbank, and in favor of the plaintiff for the sum of \$40,230, with accrued interest thereon, and that the plaintiff is entitled to recover said sums over and above all counterclaims known to him, and it being further satisfactorily shown by said affidavits that said

plaintiff is entitled to a warrant of attachment against the property of the defendants and each of them on the ground that the defendants are not residents of the State of New York, and the plaintiff having also given the undertaking required by law,

You are hereby commanded to attach and safely keep so much of the property within your County which the said defendant, Reichsbank, has or which it may have at any time before final judgment in this action as will satisfy the said plaintiff's demand of \$68,940, with accrued interest thereon and costs and expenses, and which the defendant, Deutsche Golddiskontbank, has or which it [fol. 45] may have at any time before final judgment in this action as will satisfy the said plaintiff's demand of \$40,230, with accrued interest thereon and costs and expenses, and that you proceed herein in the manner and make your return within the time required by law.

Witness, Hon. Charles J. Dodd, Justice of the Supreme Court of the State of New York, at the Court House, in the Borough of Brooklyn, City of New York, on the 11th day of December, 1941.

Hon. Charles J. Dodd, Justice of the Supreme Court of the State of New York.

Katz & Sommerich, Attorneys for Plaintiff, Office & P. O. Address, 120 Broadway, Borough of Manhattan, City of New York.

(Clerk's certificate omitted in printing.)

[fol. 46] EXHIBIT B ANNEXED TO RESPONSE

THE CHASE NATIONAL BANK

March 19, 1942.

1-23

Mr. John J. McCloskey, Jr., Sheriff of the City of New York, 31 Chambers Street, New York, N. Y.

Dear Sir:

SUPREME COURT : KINGS COUNTY

Leo Zittman, Plaintiff, vs. Reichsbank and Deutsche Golddiskontbank, Defendants.

The Chase National Bank of the City of New York hereby certifies, subject to corrections for errors or omissions, that at the time of the service of the Warrant of Attachment herein, upon it to wit on the 11th day of December, 1941 at 2:41 P. M. it held no property of nor was it indebted to the defendants, Reichsbank and Deutsche Golddiskontbank except:

- (a) There was a credit balance of \$40,401.12 in a deposit account in the name of the Reichsbank Direktorium.
- (b) It held as custodian for Deutsche Reichsbank Wertpapier, the securities set forth in the attached schedule and The Chase National Bank of the City of New York is not informed as to what interest, if any, the Reichsbank has in these securities and/or the proceeds thereof.

[fol. 47] (c) There was a credit balance of \$16,604.21 in a deposit account on its books in the name of Deutsche Golddiskontbank.

(d) It held as custodian for Deutsche Golddiskontbank the securities set forth in the attached schedule and the Chase National Bank of the City of New York is not informed as to what interest, if any, the Deutsche Golddiskontbank has in these securities and/or proceeds thereof.

The Chase National Bank of the City of New York hereby informs you that all of the aforementioned funds and securities are subject to Executive Order No. 8389 as

amended and to such other orders and decrees as may be applicable thereto.

The checks and/or drafts listed below on which payment was refused were received on a collection basis from the Reichsbank Direktorium:

Maker	Payee	Amount
Minister of Finance	President Reichspostz	
Lisbon, Portugal	entralamt Berlin	\$3,361.66
Philippine Trust Company,	Curt Georgi	25.40
Manila, P. I.		
Comptroller of Currency,	Rudolph Scheel	9.93
Washington, D. C.		
Alfred M. Feldshuh M. D.	Constance Feldshuh	86.18
Alfred M. Feldshuh M. D.	Alfred M. Feldshuh	39.90
Mary S. Halstead	Mary S. Halstead	3,828.96
D. Bouchez	Frau Barbara Dertwinkel	20.00
(name illegible)	Dresdner Bank Freiburg	75.00
William F. Wund, Special	W. Kuck & Martha Bubering	683.05
William F. Wund, Special	W. Kuck & Martha Bubering	752.53

[fol. 48] and these instruments are held by the Chase National Bank of the City of New York as Custodian for the Reichsbank Direktorium subject to Executive Order No. 8389 as amended and to such other orders and decrees as may be applicable thereto.

Yours very truly, John Prentice, Assistant Cashier.

RJB-GP.

EXHIBIT C ANNEXED TO RESPONSE

The People of the State of New York, to the Sheriff of the City of New York:

Whereas as application has been made to the undersigned by the plaintiff, John F. McCarthy, for a warrant of attachment against the property of the defendant, Reichsbank, and a summons having been duly issued in this action, and the plaintiff having satisfactorily shown by the affidavits of John F. McCarthy, duly verified the 20th day of January, 1942, and of Thomas H. Creighton, Jr., duly verified the 20th day of January, 1942, that the action is brought to recover a sum of money only for work, labor and services performed, and that a cause of action therefor exists against defendant and in favor of the plaintiff for the sum of \$24,810, with interest thereon from May 30, 1939, and that the plaintiff is entitled to recover said sum over and above all counter-

claims known to him, and it being further satisfactorily shown by said affidavits and the complaint that said plaintiff is entitled to a warrant of attachment against [fol. 49] the property of the defendant, on the ground that the defendant is a foreign corporation and not a resident of the State of New York, and the plaintiff having also given the undertaking required by law,

Now, you are hereby commanded to attach and safely keep so much of the property within your County which the said defendant Reichsbank has or which it may have at any time before final judgment in this action as will satisfy the said plaintiff's demand of \$24,810, with accrued interest thereon from May 30, 1939, and costs and expenses, and that you proceed herein in the manner and make your return within the time required by law.

Witness, Hon. Meier Steinbrink, a Justice of the Supreme Court of the State of New York, at the Court House, in the Borough of Brooklyn, City of New York, the 21st day of January, 1942.

Hon. Meier Steinbrink, Justice of the Supreme Court of the State of New York.

Katz & Sommerich, Attorneys for Plaintiff, Office & P. O. Address, 120 Broadway, Borough of Manhattan, City of New York.

(Clerk's certificate omitted in printing.)

[fol. 50] EXHIBIT D ANNEXED TO RESPONSE

THE CHASE NATIONAL BANK

April 21, 1942

1-23

Mr. John J. McCloskey, Jr., Sheriff of the City of New York, 31 Chambers Street, New York, N. Y.

Dear Sir:

SUPREME COURT : KINGS COUNTY

John F. McCarthy, Plaintiff, vs. Reichsbank, Defendant.
The Chase National Bank of the City of New York hereby certifies subject to corrections for errors or omis-

sions that at the time of the service of the Warrant of Attachment herein, upon it to wit on the 16th day of April, 1942 at 1:10 P. M. it held no property of nor was it indebted to the Defendant, Reichsbank, except:

- (a) There was a credit balance of \$40,592.71 in a deposit account in the name of the Reichsbank Direktorium.
- (b) It held as custodian for Deutsche Reichsbank Wertpapier the securities set forth in the attached photostatic schedule and The Chase National Bank of the City of New York is not informed as to what interest, if any, the Reichsbank has in these securities and/or the proceeds thereof.

[fol. 51] The Chase National Bank of the City of New York hereby informs you that all of the aforementioned funds and securities are subject to Executive Order No. 8389 as amended and to such other orders and decrees as may be applicable thereto.

The checks and/or drafts listed below on which payment was refused were received on a collection basis from the Reichsbank Direktorium;

Maker	Payee	Amount
Minister of Finance	President Reichspostz	
Lisbon, Portugal	entralamt Berlin	\$3,361.66
Philippine Trust Company,	Curt Georgi	25.40
Manila, P. I.		
Comptroller of Currency,	Rudolph Scheel	9.93
Washington, D. C.		
Alfred M. Feldshuh M. D.	Constance Feldshuh	86.18
Alfred M. Feldshuh M. D.	Alfred M. Feldshuh	39.90
Mary S. Halstead	Mary S. Halstead	3,828.96
D. Bouchez	Frau Barbara Dertwinkel	20.00
(name illegible)	Dresdner Bank Freiburg	75.00
William F. Wund, Special	W. Kuck & Martha Buberger	683.05
William F. Wund, Special	W. Kuck & Martha Buberger	752.53

and these instruments are held by The Chase National Bank of the City of New York as Custodian for the Reichsbank Direktorium subject to Executive Order No. 8389 as amended and to such other orders and decrees as may be applicable thereto.

The Chase National Bank of the City of New York hereby informs you that heretofore and on the 11th day

[fol. 52] of December, 1941 there was served upon it a Warrant of Attachment in an action entitled

Supreme Court; Kings County

LEO ZITTMAN, Plaintiff,

vs.

REICHSBANK and DEUTSCHE GOLDBANK, Defendants
Yours very truly, John Prentice, Assistant Cashier.

RJB-GP.

[fol. 53] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

ANSWER OF RESPONDENT JOHN F. MCCARTHY

The respondent, John F. McCarthy, answering the petition herein:

1. Admits the allegations contained in the paragraphs thereof numbered 1-3 inclusive, 5 and 12-17 inclusive.

2. Alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 thereof.

3. Admits the allegations contained in paragraph 6 thereof that (a) for some time prior to June 14, 1941 the Deutsche Reichsbank, the central bank of Germany, a non-resident of the State of New York, maintained a dollar checking account entitled "Reichsbank-Directorium" with respondent, Chase National Bank; (b) on June 14, 1941, with the application of the "freezing" controls of Executive Order No. 8389 to nationals of Germany by Executive Order No. 8785 this checking account was "blocked" and all transactions relating thereto were prohibited, except as authorized by the Secretary of the Treasury, and (c) on June 14, 1941 the balance in the account totalled \$139,000.00; on December 11, 1941 \$40,401.12, and on April 16, 1942, \$40,592.71, and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

4. Admits the allegations contained in paragraph 7 thereof that (a) for some time prior to June 14, 1941, the Deutsche Golddiskontbank, a non-resident of the State of New York, maintained a dollar checking account with respondent, Chase National Bank; (b) on June 14, 1941, [fol. 54] with the application of the "freezing" controls of Executive Order No. 8389 to Nationals of Germany by Executive Order No. 8785, this checking account was similarly "blocked" and all transactions other than the transfer of an interest in the account were prohibited, except as authorized by the Secretary of the Treasury, and (c) on June 14, 1941 the balance in this account totalled \$17,132.00 and on December 11, 1941, \$16,604.21 and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

5. Admits the allegations contained in paragraph 8 thereof that (a) on or about December 11, 1941, respondent Leo Zittman commenced an action in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank and Deutsche Golddiskontbank (action No. 16183 1941); (b) pursuant to a warrant of attachment procured by respondent Zittman, the Sheriff of the County of New York, then Daniel E. Finn, Jr., on or about December 11, 1941 levied upon said accounts of Deutsche Reichsbank and Deutsche Golddiskontbank by serving certified copies of warrants of attachment upon the respondent Chase National Bank and (c) thereafter, following the service by publication and mailing of the summons in said action, judgments by default for \$94,609.37 against Reichsbank and for \$56,023.21 against Golddiskontbank were entered both in favor of respondent Zittman, and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

6. Admits the allegations contained in paragraph 9 thereof that licenses were never obtained authorizing respondent Chase National Bank to pay the said judgments out of either of the respective "blocked" accounts and that to date no execution has been had on the judgments, [fol. 55] and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

7. Admits the allegations contained in paragraph 10 thereof that (a) on or about January 20, 1942, respondent John F. McCarthy commenced an action in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank (action No. 719-1942); (b) pursuant to a warrant of attachment procured by respondent McCarthy, the Sheriff of the City of New York, respondent John J. McCloskey, Jr., on or about January 21, 1942 levied upon the said account of Deutsche Reichsbank by serving a certified copy of a warrant of attachment upon the respondent Chase National Bank, and (c) following the service by publication and mailing of the summons in said action on April 24, 1942 a judgment against Deutsche Reichsbank by default for \$29,660.21 was entered in favor of respondent McCarthy, and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

8. Admits the allegations contained in paragraph 11 thereof that (a) on May 29, 1942, the Foreign Funds Control of the United States Treasury Department denied Application No. NY-401383 of respondent McCarthy for a license authorizing respondent Chase National Bank to pay said judgment out of the said "blocked" account, and (b) a license was never obtained authorizing respondent Chase National Bank to pay the said judgment out of the said "blocked" account and to date no execution has been had on the judgment, and except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

[fol. 56]

First Defense

9. In the action commenced by the respondent McCarthy, a resident citizen of the United States, as plaintiff, against Reichsbank, as defendant, in the New York Supreme Court, Kings County, by the filing of the summons and complaint therein in the office of the Clerk of Kings County, New York, on January 21, 1942, McCarthy, as assignee, sought to recover the sum of \$24,810.00 with interest thereon from May 30, 1939 for legal work, labor and services rendered the said Reichsbank at its special instance and request by Frank W. Mondell, who was a member of the 54th (1895-97) and 56th to 67th Congresses (1899-1923), majority floor leader in the 66th and 67th Congresses and Director of the War Finance Corporation

(1923-1925) and who died on or about August 6, 1939, a resident of the District of Columbia, leaving a Last Will and Testament which was duly probated by the United States District Court for the District of Columbia and upon which Letters of Administration with the Will annexed were duly issued and granted by the said United States District Court to William H. Mondell, appointing him Administrator with the will annexed of the goods, chattels and credits which were of said Frank W. Mondell, and said William H. Mondell, who thereupon duly qualified and acted as such Administrator with the Will annexed, duly assigned said claim against the Reichsbank to the respondent McCarthy.

10. In said action a warrant of attachment was duly issued on January 21, 1942 to the Sheriff of the City of New York who, pursuant to the direction contained in said warrant, levied upon the accounts of the Reichsbank with the Chase National Bank, among others, by serving a certified copy of said warrant of attachment upon said Chase National Bank, and upon February 17, 1942, the [fol. 57] New York Supreme Court, Kings County, made an order directing service of the summons in said action upon Reichsbank by publication, which order further provided that the mailing of a copy of the summons and complaint and said order for service of summons by publication and the notice required by Rule 52 of the New York Rules of Civil Practice to said Reichsbank as required by Rule 50 of said Rules be dispensed with and that a copy of each thereof be mailed to the Attorney General of the United States on behalf of said Reichsbank.

11. On February 17, 1942 the United States was at war with Germany, and said Reichsbank was a foreign corporation having its office in, and it was a national of, Germany, and Rule 50 of the New York Rules of Civil Practice then provided that in such case the order of the Court for service of the summons by publication may dispense with the mailing of any papers to the defendant and, in lieu thereof, shall direct that the papers be mailed to such officer as may have been appointed by the President of the United States to take possession of the property of alien enemies directed to him at Washington, District of Columbia, on behalf of such defendant.

12. The officer contemplated by said Rule 50 as it ex-

isted prior to its amendment on March 16, 1942 was the officer whom the President was authorized to appoint pursuant to Section 6 of the Trading with the Enemy Act of October 6, 1917 (40 Stat. 415; U. S. Code, Title 50 Appendix, Section. 6) and by said statute the President was authorized to appoint an official to be known as the Alien Property Custodian with power to receive all money and property in the United States due or belonging to any enemy or ally of an enemy which may be paid, conveyed, transferred, assigned or delivered to said Custodian under the provisions of said act.

[fol. 58] 13. By an Executive Order No. 6894 made and issued by the President on May 1, 1934 which became effective on July 1, 1934, the office of the Alien Property Custodian was abolished and ceased to exist and all the authority, rights, privileges, powers and duties conferred and imposed on said official by law were transferred to the Department of Justice to be administered under the supervision of the Attorney General and said Executive Order was in full force and effect on February 17, 1942 when the order for publication of the summons in said action of the respondent McCarthy against Reichsbank was issued.

14. Publication of the summons in said action was made in accordance with the terms of said order for service by publication, dated February 17, 1942 and copies of the summons and complaint in said action, the order for service of the summons by publication and notice required by Rule 52 of the New York Rules of Civil Practice were mailed on February 18, 1942 addressed to the Attorney General of the United States, at Washington, D. C., and under date of February 25, 1942, the Attorney General of the United States acknowledged receipt thereof.

15. The Attorney General of the United States made no appearance and took no steps in said action and permitted judgment to be taken and entered therein in favor of respondent McCarthy against Reichsbank on April 24, 1942 for \$29,660.21, and by reason thereof the then Attorney General of the United States acquiesced in the taking and entry of said judgment and consented thereto.

Second Defense

16. Repeats and reiterates each and every allegation contained in paragraphs hereof numbered 8-14 inclusive with the same force and effect as if fully set forth at length herein.

[fol. 59] 17. The acquiescence in the taking and entry of said judgment and consent thereto of the then Attorney General of the United States is binding upon the petitioner herein, and by reason thereof petitioner is estopped from questioning the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

Third Defense

18. From the inception of the "freezing" control, and on January 21, 1942 when the warrant of attachment was issued in the aforesaid action of McCarthy against Reichsbank and the levy made thereunder upon the accounts of the Reichsbank with the Chase National Bank, the commencement of actions in the courts of the United States or any of the States against blocked nationals and the issuance of warrants of attachment against funds belonging to blocked nationals and levied thereunder were authorized by the United States Treasury Department, which was empowered by Executive Order No. 8389, as amended, to administer the "freezing" control thereunder, and said Treasury Department merely required that a license be secured before payment to satisfy any judgment could be made from any blocked account affected by said Executive Order, and by reason thereof the commencement of the aforesaid action of McCarthy against Reichsbank, the issuance of the warrant of attachment therein and levy made thereunder on January 21, 1942, were authorized by the United States Treasury Department.

Fourth Defense

19. Repeats and reiterates each and every allegation contained in paragraph 18 hereof with the same force and effect as if fully set forth at length herein.

[fol. 60] 20. Said authorization of the United States Treasury Department is binding upon the petitioner herein and by reason thereof petitioner is estopped from question-

ing the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

Fifth Defense

21. General Ruling No. 12 issued on April 21, 1942 by the Secretary of the Treasury in connection with the administration of the "freezing" control under Executive Order No. 8389, as amended, acted as a license validating the issuance of the warrant of attachment in the aforesaid action of McCarthy against Reichsbank, the levy made thereunder upon the accounts of the Reichsbank with the Chase National Bank of New York on January 21, 1942, the judgment recovered by the respondent McCarthy in said action against the Reichsbank on April 24, 1942, and the transfer thereby to the respondent McCarthy of the attributes of property interest in said accounts except payment.

Sixth Defense

22. Repeats and reiterates each and every allegation contained in paragraph 21 hereof with the same force and effect as if fully set forth at length herein.

23. Said General Ruling No. 12 is binding upon the petitioner herein and by reason thereof petitioner is estopped from questioning the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

[fol. 61]

Seventh Defense

24. Under the laws of the State of New York a lien for the security of his demand against the Reichsbank was created in favor of the respondent McCarthy upon the accounts of the Reichsbank with the Chase National Bank on January 21, 1942, when the levy was made under the warrant of attachment issued by the New York Supreme Court, Kings County, and the rights or interest, if any, of the petitioner in said accounts by virtue of and under Vesting Order No. 7792 are subject to said attachment and said lien.

Eighth Defense

25. The service of a certified copy of the warrant of attachment issued by the New York Supreme Court, Kings County, in the action of McCarthy against Reichsbank by the Sheriff of the City of New York on January 21, 1942 on the respondent Chase National Bank made the accounts of the Reichsbank with the Chase National Bank the subject of that litigation and brought said accounts under the jurisdiction and control of the New York Supreme Court, Kings County, and the United States District Courts have no jurisdiction to interfere with or nullify said jurisdiction and control of said property by the New York Supreme Court, Kings County.

Ninth Defense

26. The action in the New York Supreme Court, Kings County, instituted by the respondent McCarthy against Reichsbank, was a proceeding *in rem* and subjected the accounts of the Reichsbank with the respondent Chase National Bank, which were levied upon and attached by the Sheriff of the City of New York on January 21, 1942, [fol. 62] to the payment of the judgment recovered by the respondent McCarthy in said action against the Reichsbank on April 24, 1942 with interest.

Tenth Defense

27. The judgment entered on April 24, 1942 in favor of the respondent McCarthy against the Reichsbank in the action in the New York Supreme Court, Kings County, is a judgment *in rem* and is binding upon all the world, including the petitioner herein, with respect to the accounts of the Reichsbank with the Chase National Bank levied upon on January 21, 1942 by the Sheriff of the City of New York, by the service of a certified copy of the warrant of attachment issued in that action.

Eleventh Defense

28. Respondent McCarthy is a citizen of the United States and is entitled under Section 8 of the Trading with the Enemy Act (40 Stat. 418; United States Code, Title 50, Appendix, Section 8) to continue to have his lien for

the security of his judgment against the Reichsbank created in his favor upon the accounts of the Reichsbank with the Chase National Bank on January 21, 1942 by the service by the Sheriff of the City of New York of a certified copy of the warrant of attachment issued in the action in the New York Supreme Court, Kings County, and to enforce said lien, realize thereon, and satisfy the judgment recovered by him against the Reichsbank out of the said attached accounts.

Twelfth Defense

29. The service by the Sheriff of the City of New York upon the Chase National Bank on January 21, 1942, of [fol. 63] a certified copy of the warrant of attachment issued by the New York Supreme Court, Kings County, in the action in that Court of the respondent McCarthy against Reichsbank enjoined and forbade the Chase National Bank to make or suffer any transfer or other disposition of or interfere with the accounts of the Reichsbank with the Chase National Bank so levied upon to any person or persons, including the petitioner herein, other than the said Sheriff, except upon the direction of the said Sheriff, or pursuant to an order of the New York Supreme Court, and such injunction is still in full force and effect.

Thirteenth Defense

30. The Treasury Department has in the administration of the "freezing" control under Executive Order 8389, as amended, recognized attachments as valid and creating liens upon blocked accounts without first procuring a particular license therefor by issuing licenses after recovery of judgment authorizing payment out of the attached accounts in satisfaction of the judgment.

31. That such practice of the Treasury Department is binding upon the petitioner herein and by reason thereof, petitioner is estopped from questioning the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

Fourteenth Defense

32. Upon information and belief, that since the inception of the "freezing" control the Alien Property Custodian has recognized the validity of an attachment against blocked accounts of an enemy of the United States and the prior right of property therein of the judgment creditor by payment of the judgment out of the enemy judgment debtor's assets taken over by the Alien Property Custodian under a Vesting Order notwithstanding the judgment creditor had not procured a particular license authorizing the attachment and entry of judgment since the inception of the "freezing" control, and by reason thereof the petitioner herein is estopped from questioning the validity of the proceedings in said action in McCarthy against Reichsbank in the New York Supreme Court, Kings County, the judgment entered therein and the prior right of property of McCarthy in the attached accounts of the Reichsbank with the Chase National Bank.

Wherefore, the respondent McCarthy prays that the petition herein be dismissed, together with the costs and disbursements of this action.

Katz & Sommerich, By Henry I. Fillman, a member of the firm, Attorneys for respondent, John F. McCarthy, Office and Post Office Address, 120 Broadway, New York 5, N. Y.

(Verified by John F. McCarthy, Feb. 5, 1948.)

[fol. 65] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

ANSWER OF RESPONDENT LEO ZITTMAN

The respondent, Leo Zittman, for his response to the Order to Show Cause herein, dated January 23, 1948, and for his answer to the petition herein, on information and belief,

1. Admits the allegations of fact contained in the paragraphs of the petition herein, numbered 1 to 5 inclusive, 9, 10 and 12 to 17, inclusive.

2. Alleges that he is without knowledge or information sufficient to form a belief as to each and every allegation

contained in the paragraph of the petition herein, numbered 11.

3. Admits the allegations contained in the paragraph of the petition herein, numbered 6, except that this respondent denies that application of the "freezing" Controls of Executive Order No. 8389 as extended by Executive Order No. 8785, proscribed the transfer of any interest in the account therein described, maintained with the respondent, Chase National Bank, or in the funds represented thereby and denies that all transactions relating thereto were prohibited except as specifically authorized by the Secretary of the Treasury.

4. Admits the allegations contained in the paragraph of the petition herein, numbered 7, except that this respondent denies that application of the "freezing" Controls of Executive Order No. 8389, as extended by Executive Order No. 8785, prohibited the transfer of any interest in the account therein described, maintained with the respondent, Chase National Bank, or any or all other [fol. 66] transactions relating thereto, except as specifically authorized by the Secretary of the Treasury.

5. Admits the allegations contained in the paragraph of the petition herein, numbered 8, except that this respondent alleges that the action commenced by him in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank and Deutsche Golddiskontbank, defendants (action No. 16183-1941), was begun on December 11, 1947, and on no other day and that levies pursuant to the warrant of attachment procured by this respondent in said action, were duly made by the then Sheriff of the County of New York on the accounts maintained by the said defendants with the Chase National Bank on December 11, 1941, at 2:41 P. M.

By way of further defense to the petition herein, Respondent, Leo Zittman, says:

6. That, in the action begun by this respondent, a resident citizen of the United States, as plaintiff, against Reichsbank and Deutsche Golddiskontbank, as defendants (Cause No. 16183-1941), in the Supreme Court of the State of New York, Kings County, by the filing of the summons therein in the office of the Clerk of Kings County, New York, on December 11, 1941, this respondent sought to recover the sum of \$68,940 with interest thereon from

July 2, 1937, from the Reichsbank and the sum of \$40,230 with interest thereon from July 2, 1937, from Deutsche Golddiskontbank for unjust enrichment upon a cause of action therefor which arose on July 2, 1937, and that such action was brought for the benefit of a person within the United States not an enemy or ally of enemy of the United States.

7. That, in said action, a warrant of attachment was duly issued on December 11, 1941, to the Sheriff of the [fol. 67] County of New York who, pursuant to the direction contained in said warrant, levied upon the funds, credits and property of the Reichsbank and the Deutsche Golddiskontbank maintained with, and held by, the respondent, Chase National Bank, among others, by serving a certified copy of said warrant of attachment upon said Chase National Bank on December 11, 1941, at 2:41 o'clock P. M. and that, at the time of the service of the said warrant of attachment, the said Chase National Bank, as shown by its written certification to the said Sheriff, dated March 19, 1942, held property of, and was indebted to, the defendants in said action as follows:

(a) The said Chase National Bank was indebted to the said the Reichsbank to the extent of \$40,401.12 in a deposit account.

(b) The said Chase National Bank held as custodian for the Reichsbank certain securities as described in the said certification.

(c) The said Chase National Bank was indebted to the said Deutsche Golddiskontbank to the extent of \$16,604.21 in a deposit account.

(d) The said Chase National Bank held as custodian for the Deutsche Golddiskontbank certain securities as described in the said certification; and

that all of said funds, credits and property were received and held by the said Chase National Bank prior to the commencement of the War with Germany.

8. That, in said action and on December 31, 1941, the Supreme Court of the State of New York, Kings County, made an order directing service of the summons in said action upon Reichsbank and Golddiskontbank by publication, which order further provided that the mailing of a

copy of the summons and complaint and said order for [fol. 68] service of summons by publication and the notice required by Rule 52 of the New York Rules of Civil Practice to said Reichsbank and Deutsche Golddiskontbank as required by Rule 50 of said Rules be dispensed with and that a copy of each thereof be mailed to the Attorney General of the United States on behalf of said Reichsbank and said Deutsche Golddiskontbank; and that the said Reichsbank and said Deutsche Golddiskontbank were non-residents of the State of New York and were foreign corporations which had offices and places of business in, and were nationals of, Germany.

9. That publication of the summons in said action was made in accordance with the terms of said order for service by publication, dated December 31, 1941, and copies of the summons and complaint in said action, the order for service of the summons by publication and notice required by Rule 52 of the New York Rules of Civil Practice were duly and regularly mailed, addressed to the Attorney General of the United States, at Washington, D. C., and that the Attorney General of the United States acknowledged receipt thereof.

10. That the Attorney General of the United States made no appearance and took no steps in said action and, accordingly, judgment was taken and entered in said action, on March 27, 1942, in favor of this respondent against the Reichsbank for \$92,655.28 and against the Deutsche Golddiskontbank for \$54,069.12 and against Reichsbank and Deutsche Golddiskontbank, jointly and severally, for \$1,954.09, costs and disbursements as taxed; that the Attorney General acquiesced in the said action and proceedings and judgment had therein; and that such acquiescence is binding on the petitioner and he is estopped thereby.

11. That upon the service of the said warrants of attachment in said action upon the Chase National Bank, [fol. 69] the latter, by virtue of Section 917 of the New York Civil Practice Act, was "forbidden to make or suffer, any transfer or other disposition of, or interfere with any such property or interest therein so levied upon, or pay over or otherwise dispose of any debt so levied upon, or sell, assign or transfer any right so levied upon, to any person, or persons, other than the sheriff serving the said warrant until ninety days from the date of such service,

except upon direction of the sheriff or pursuant to an order of the Court," which injunction is still in full force and effect.

12. That transfer of attached funds or property contrary to Section 917 of the New York Civil Practice Act constitutes under the law of New York a civil contempt of court, punishable by fine and imprisonment, or either.

13. That, under Section 922 of the New York Civil Practice Act, the Sheriff may be required to commence, within ninety days of service of the certified copy of the warrant of attachment, an action or special proceeding to reduce to his actual custody the property attached, but such section further provides:

"The time within which such action or special proceeding, as hereinbefore provided, may be commenced shall be extended beyond the period of ninety days from the date of the service of the said warrant only by order of the court for good cause shown. * * * An order thus extending the time within which such an action or special proceeding may be commenced shall be effective to continue all duties and liabilities of any person on whom a warrant of attachment in the action has been served, provided that a certified copy of the said order is served upon said person prior to the expiration of the said ninety days, or prior to the expiration of the time for commencing such an action or special proceeding as further extended."

[fol. 70] 14. That, from time to time and in accordance with the provisions of Section 922 of the New York Civil Practice Act, orders have been duly and regularly made in said action by the Supreme Court of the State of New York, County of Kings, and have been duly and regularly entered and served as prescribed by Section 922 of the New York Civil Practice Act, extending the time within which the Sheriff of the City of New York might commence an action or special proceeding prescribed in said Section 922, to collect, receive and enforce the debts, effects, things in action and property attached by him and that, by an order so made by said Court and entered on January 27, 1948, and duly served on the Chase National Bank on January 29, 1948, such time has been so extended to March 11, 1949.

15. That the warrant of attachment in said action brought by this respondent has never been vacated or modified nor has the attachment thereunder been released, discharged or otherwise removed and that, by virtue of such attachment, this respondent has acquired a lien against, and an interest and property right in, the funds, credits and property so attached and is entitled to require the same to be applied to the satisfaction of the judgments obtained by this respondent in his said action against the Reichsbank and the Deutsche Golddiskontbank and that such lien, interest and property right of this respondent are prior and superior to the rights claimed by the petitioner in this action.

16. That, by virtue of the service of a certified copy of the warrant of attachment granted by the Supreme Court of the State of New York, County of Kings, in the said action brought by this respondent by the Sheriff of New York County on December 11, 1941, on the respondent, Chase National Bank, the said Supreme Court of the State of New York acquired sole and exclusive jurisdiction and [fol. 71] control of, and dominion over, the funds, credits and property attached and that the United States District Courts have no jurisdiction or power to adjudicate with respect to, interfere with, or exercise authority or control over such funds, credits or property or the jurisdiction and control of, and dominion over, the same acquired by and vested in the said Supreme Court of the State of New York.

17. That this respondent is a citizen of the United States and is entitled, under Section 8 of the Trading With The Enemy Act (40 Stat. 418; U. S. Code, Title 50, Appendix, Section 8) to continue to have and enjoy his lien and security right in the funds, credits and property of the Reichsbank and the Deutsche Golddiskontbank in the hands of the Chase National Bank which was effected by the service of the said certified copy of warrant of attachment on the Chase National Bank on December 11, 1941 and to enforce such lien and security right, realize thereon, and satisfy the said judgments recovered by him against the Reichsbank and the Deutsche Golddiskontbank out of the funds, credits and property so attached.

18. That the Treasury Department of the United States, in the administration of the "freezing" controls under

Executive Order 8389, as amended, has recognized, consented to, and acquiesced in, unlicensed attachments against, and other judicial seizure of, blocked accounts as valid and effective and as creating valid and enforceable liens against such accounts and has issued licenses authorizing payment out of such blocked accounts in satisfaction of judgments obtained in actions begun by or involving such attachment against, or other judicial seizure of, such blocked accounts and that, by reason thereof, petitioner is estopped from questioning the validity or effect of the proceedings had in the said action brought by this petitioner and the judgment entered therein.

[fol. 72] 19. That, since the inception of "freezing" controls the Alien Property Custodian has recognized and acquiesced in the validity of attachments against blocked accounts of enemies of the United States and of the lien and superior right of the attaching creditor by making payment of judgments secured in attachment proceedings out of the enemy judgment debtor's assets acquired by the Alien Property Custodian under a Vesting Order, notwithstanding that the attaching creditor had not procured a particular license authorizing the attachment and entry of judgment and, by reason thereof, petitioner herein is estopped from impugning the validity of the proceedings had in the said action brought by this respondent against the Reichsbank and the Deutsche Golddiskontbank in the Supreme Court of the State of New York, County of Kings, the judgment entered therein and the prior lien and interest secured by this petitioner in the attached funds, credits and property in the hands of the respondent, the Chase National Bank.

20. That the Treasury Department of the United States, which was empowered to administer the "freezing" control under Executive Order 8389, as amended, did, on December 11, 1941, and prior and subsequent thereto, authorize, acquiesce in and ratify the commencement of suits against blocked nationals and the attachment, or other judicial seizure of funds, credits and property belonging to blocked nationals; that, accordingly, the aforesaid action brought by this respondent against the Reichsbank and the Deutsche Golddiskontbank and the proceedings had therein were authorized, ratified and acquiesced in by the said Treasury Department; and that such authorization,

acquiescence and ratification are binding on the petitioner and he is estopped thereby.

[fol. 73] 21. That a lien against, and property interest in, the funds, credits and property of the Reichsbank and the Deutsche Golddiskontbank maintained with the Chase National Bank arose in favor of this respondent when the same were levied upon in the said action, pursuant to the warrant of attachment granted by the Supreme Court of the State of New York, County of Kings, and such lien and property interest are superior to the interest of the petitioner, if any, in said funds, credits and property and, accordingly, that this respondent is entitled to require that said funds, credits and property be applied to the satisfaction of his said judgment.

22. That the said judgment, entered in favor of this respondent on March 27, 1942, against the Reichsbank and the Deutsche Golddiskontbank in the said action in the Supreme Court of the State of New York, County of Kings, is a judgment *in rem* and is binding upon the said funds, credits and property levied upon, as aforesaid, on December 11, 1941, as against the whole world, including the petitioner.

23. That the order prayed for by the petitioner, if granted wholly or in part, would contravene and deny to this respondent rights guaranteed to him by the Constitution of the United States.

Wherefore, the respondent, Zittman, prays that the petition herein be dismissed.

Joseph M. Cohen, Attorney for Respondent, Leo Zittman, 36 West 44th Street, New York 18, N. Y.

(Verified by Joseph M. Cohen, Feb. 20, 1948.)

[fol. 74] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED ANSWER OF RESPONDENT JOHN J. McCLOSKEY

The respondent, John J. McCloskey, as Sheriff of the City of New York, for his amended answer to the petition herein respectfully alleges:

1. The respondent Sheriff of the City of New York adopts as his answer the allegations contained in the answers to the petition herein respectively submitted by the respondents Leo Zittman and John F. McCarthy, said allegations being incorporated herein by reference with the same force and effect as if fully set forth at length herein.

Wherefore, the respondent Sheriff of the City of New York prays:

1. That the petition herein be dismissed;

2. That if the Court determines that the petitioner is entitled to possession of the property attached by the Sheriff pursuant to the Zittman and McCarthy attachments, any decree to be entered thereon should provide for the payment of the Sheriff's statutory poundage fees arising from said attachments and for such other and further relief as the Court may deem just.

Sidney Posner, Attorney for Respondent John J. McCloskey, as Sheriff of the City of New York,
Office and P. O. Address, 31 Chambers Street, New York 7, N. Y.

(Verified by H. William Kehl, Undersheriff, Feb. 27, 1948.)

[fol. 75] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF TIMOTHY N. PFEIFFER IN RESPONSE TO PETITION
AND ORDER TO SHOW CAUSE

STATE OF NEW YORK,
County of New York, ss:

TIMOTHY N. PFEIFFER, being duly sworn, deposes and says:

1. I am a partner of Milbank, Tweed, Hope & Hadley, counsel for The Chase National Bank of the City of New York (hereinafter called the "Chase") in the above-entitled action, and make this affidavit in response to the petition of Tom Clark, Attorney General, and the order to show cause herein.

2. On information and belief, the accounts of Reichsbank Direktorium and Deutsche Golddiskontbank, to which Vesting Orders Nos. 7792 and 7870 (annexed to the petition of petitioner herein as Exhibits C and E, respectively), purported to relate, had as set forth in the annexed affidavit of John C. Prentice, Second Vice President of the Chase, previously been levied upon by service of certified copies of certain warrants of attachment in actions then pending in the Supreme Court of New York, County of Kings. In my opinion the said warrants were valid and effective at the time of the purported Vesting Orders.

3. Pursuant to Section 917 of the New York Civil Practice Act, a person served with such certified copy of warrant of attachment "is forbidden to make or suffer, any transfer or other disposition of, or interfere with, any such property or interest therein so levied upon, or pay over or otherwise dispose of any debt so levied upon, or sell, assign or transfer any right so levied upon, to any person, or persons, other than the sheriff serving the said warrant until ninety days from the date of such service, [fol. 76] except upon direction of the sheriff or pursuant to an order of the court."

4. Under Section 922 of the New York Civil Practice Act, the Sheriff may be required to commence, within ninety days of service of the certified copy of the warrant of at-

attachment, an action or special proceeding to reduce to his actual custody the property affected, but the section further provides:

"The time within which such action or special proceeding, as hereinbefore provided, may be commenced shall be extended beyond the period of ninety days from the date of the service of the said warrant only by order of the court for good cause shown. * * * An order thus extending the time within which such an action or special proceeding may be commenced shall be effective to continue all duties and liabilities of any person on whom a warrant of attachment in the action has been served, provided that a certified copy of the said order is served upon said person prior to the expiration of the said ninety days, or prior to the expiration of the time for commencing such an action or special proceeding as further extended."

5. Transfer of funds contrary to Section 917 of the New York Civil Practice Act constitutes under the law of New York a civil contempt of court punishable accordingly. Under Section 753 of the Judiciary Law, a civil contempt may be punished by fine and imprisonment, or either.

6. Complex questions of law are raised by the present proceeding directed at securing an order declaring that petitioner is entitled to transfer of the attached property, [fol. 77] without vacation of the warrants of attachment. Among these questions are (a) whether the Chase would not be liable upon transfer of the funds to the Attorney General of the United States for violation of the New York Statute and/or for contempt of the New York Court and its process, (b) the statutory authority, validity and constitutionality of the Vesting Orders as attempted to be applied herein, and their effect upon the prior attachments, (c) whether the Vesting Orders as here attempted to be applied were not contrary to Section 8 of the Trading with the Enemy Act, (d) whether the attachments are affected by Executive Order No. 8389, as amended, or any regulations and rulings thereunder; and if so, the validity, constitutionality and effect of the said order, regulations and rulings.

7. In addition, the petition herein presents the procedural question, whether the procedure by order to show cause and petition is proper or whether under the Rules of Civil Procedure this is an action required to be instituted by complaint.

8. The questions herein cannot be adequately prepared or presentation in the brief time before return of the show cause order.

Wherefore, the respondent, The Chase National Bank of the City of New York, prays:

- (1) That the order prayed for by petitioner be denied;
- (2) That the Court determined whether the procedure by petition and order to show cause is proper; and
- (3) That if the Court should determine that the procedure herein is proper, that the Court fix such date not before March 6, 1948, as may be proper for further hearing on the merits.

(Sworn to by Timothy N. Pfeiffer, Feb. 5, 1948.)

[fol. 78] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

AFFIDAVIT OF JOHN C. PRENTICE

STATE OF NEW YORK,
County of New York, ss:

John C. Prentice, being duly sworn, deposes and says:

1. I am a Second Vice President of The Chase National Bank of the City of New York (hereinafter called the "Chase") and am familiar with the facts hereinafter set forth.

2. On June 14, 1941, accounts were maintained by Reichsbank Direktorium and Deutsche Golddiskontbank with the Chase. Pursuant to and in accordance with the Regulations of April 10, 1940, as amended, issued under Executive Order No. 8389, as amended, the Chase duly made reports thereof to the Secretary of the Treasury.

3. On December 11, 1941, the Chase was served with a certified copy of a warrant of attachment in an action by Leo Zittman, Plaintiff v. Reichsbank and Deutsche Golddiskontbank, Defendants, the amounts claimed being \$68,940, with accrued interest, against the defendant Reichsbank, and \$40,230, with accrued interest, against defendant Deutsche Golddiskontbank. The certification to the Sheriff by the Chase, made March 19, 1942, showed that there was at the time of service of the warrant a credit balance of \$40,401.12 in a deposit account in the name of Reichsbank Direktorium, and a credit balance of \$16,604.21 in the deposit account in the name of Deutsche Golddiskontbank; that certain securities were held by the Chase as custodian for Deutsche Reichsbank Wertpapier, and certain securities were held by the Chase as custodian for Deutsche Gold-[fol. 79] diskontbank, but that the Chase was not informed of what interest Deutsche Reichsbank Wertpapiere or Deutsche Golddiskontbank had in the securities and/or the proceeds thereof held for the respective accounts; and that certain collection items on which payment had been refused were also held by the Chase as custodian for Reichsbank Direktorium. The Chase further reported that the above funds, securities and other instruments were held subject to Executive Order No. 8389, as amended.

4. The Chase has from time to time been duly served with certified copies of court orders in the above-mentioned action of Zittman v. Reichsbank and Deutsche Golddiskontbank, extending the time within which the Sheriff must commence an action or special proceeding to reduce to possession the property attached. The latest such order of which a certified copy has thus been served is dated January 27, 1948, and extends the aforesaid time within which the Sheriff must commence an action or special proceeding to and including March 11, 1949.

5. On April 16, 1942, the Chase was served with a certified copy of a warrant of attachment in an action by John F. McCarthy, Plaintiff v. Reichsbank, Defendant, the amount claimed being \$24,810, with interest from May 30, 1939. The certification of the Chase to the Sheriff, made April 21, 1942, showed that there was a credit balance in the deposit account in the name of Reichsbank Direktorium of \$40,592.71; that certain securities were held by the Chase as custodian for Deutsche Reichsbank Wert-

papier, but that the Chase was not informed of what interest Deutsche Reichsbank Wertpapier had in the securities and/or the proceeds thereof held for its account; and that certain collection items on which payment had been refused were also being held by the Chase as custodian for Reichsbank Direktorium. The Chase further reported that the above funds, securities and instruments were held sub-[fol. 80] ject to Executive Order No. 8389, as amended, and that there had previously been served upon the Chase a warrant of attachment in Zittman v. Reichsbank and Deutsche Golddiskontbank.

6. The Chase has from time to time been served with certified copies of court orders in the above-mentioned action of McCarthy v. Reichsbank, extending the time within which the Sheriff must commence an action or special proceeding to reduce to possession the property attached. The latest such order of which a certified copy has thus been served is dated April 15, 1947, and extends the aforesaid time within which the Sheriff must commence an action or special proceeding to and including April 22, 1948.

7. Under date of December 14, 1939, the Chase for the account and risk of Reichsbank Direktorium agreed with the Irving Trust Company of New York to hold the said trust company harmless from any and all consequences arising from the payment of a draft of the said trust company without presentment of original and duplicate of the draft. In consideration of the said agreement the said trust company paid to the Chase, and the Chase credited to the deposit account in the name of Reichsbank Direktorium, \$2,211.70, the dollar equivalent of the said draft at the rate of 40c. The amount involved in the said indemnity agreement is \$2,211.70. The duplicate of the item thus paid being still outstanding, the Irving Trust Company has declined to release the Chase from the said indemnity agreement and the obligation of the Chase upon the same is still in effect.

8. The Deutsche Gold-diskontbank is presently indebted to the Chase for custodian fees accruing, in respect of its custody account with the Chase, since January 1, 1942, the amount thereof accrued as of January 29, 1948 being [fol. 81] \$152.01, and such fees accruing thereafter at the rate of \$25 per annum. The Chase asserts a lien against

the property held by it for account of Deutsche Golddiskontbank for such custodian fees.

9. On or about November 18, 1946, the Chase received a letter from the Office of Alien Property dated November 18, 1946, as set forth in Exhibit F attached to petitioner's petition herein, together with a certified copy of Vesting Order No. 7870 dated October 14, 1946, as set forth in Exhibit E attached to petitioner's petition herein, purporting to vest that certain debt or other obligation owing to Deutsche Gold-iskontbank arising out of a dollar checking account entitled Deutsche Golddiskontbank and any and all rights to demand, enforce and collect the same. The effective date of the said Vesting Order under APC General Order 33 is November 18, 1946.

10. The Chase by letter dated November 26, 1946, as set forth in Exhibit H attached to petitioner's petition herein, informed the Office of Alien Property of the warrant of attachment relating to the said account, and stated that the matter of payment to the Attorney General of the United States was being held in abeyance pending receipt of a release of the outstanding warrant of attachment. The Chase has not refused to comply with the said Vesting Order No. 7870 other than by the said letter informing the Office of Alien Property of the prohibition by mandate of the New York court against transfer of the account or interest of Deutsche Golddiskontbank levied upon by such warrant of attachment.

11. During late 1946, the Chase received a letter from the Office of Alien Property, dated November 26, 1946, as set forth in Exhibit D attached to petitioner's petition herein, together with a certified copy of Vesting Order No. 7792 dated October 3, 1946, as set forth in Exhibit C attached to petitioner's petition herein, purporting to vest [fol. 82] property described in subparagraph 2(a) as that certain debt or other obligation owing to Deutsche Reichsbank arising out of a dollar checking account entitled Reichsbank Direktorium; property described in subparagraph 2(b) thereof as that certain debt or other obligation owing to Deutsche Reichsbank arising out of a dollar checking account entitled Deutsche Reichsbank, Westpapierabteilung [sic] FS 62971; and property described in subparagraph 2(c) thereof as that certain debt or other obligation owing to Deutsche Reichsbank arising out of a

dollar checking account entitled General Ruling No. 6 Account, Deutsche Reichsbank, Westpapierabteilung [sic] F 62971 and any and all rights to demand, enforce and collect the same. The effective date of the said Vesting Order under APC General Order 33 is October 9, 1946.

12. The Chase by letter dated August 13, 1947, as set forth in Exhibit G attached to petitioner's petition herein, informed the Office of Alien Property of the warrants of attachment relative to the said accounts and stated that the matter of payment to the Attorney General of the United States was being held in abeyance pending receipt of a release of the outstanding warrants of attachment. The Chase further informed the said Office that the accounts mentioned in subparagraphs 2(b) and 2(c) of the Vesting Order were set up to handle the income from securities held in custody for Deutsche Reichsbank Wertpapier, said securities having been reported to the Sheriff in the return of the Chase. The Chase has not refused to comply with the said Vesting Order No. 7792 other than by the said letter informing the Office of Alien Property of the prohibition by mandate of the New York court against transfer of the accounts or interests of Reichsbank Direktorium levied upon by such warrant of attachment.

[fol. 83] 13. The Chase has never been served with any notice that the said warrant of attachment in *Zittman v. Reichsbank and Golddiskontbank* has been released, vacated or annulled or the attachment discharged.

14. The Chase has never been served with any notice that the said warrant of attachment in *McCarthy v. Reichsbank* has been released, vacated or annulled or the attachment discharged.

John C. Prentice,

(Sworn to by John C. Prentice, Feb. 5, 1948.)

[fol. 84] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

STIPULATION AS TO FACTS—March 16, 1948

It is hereby stipulated and agreed by and between the petitioner herein and the respondent The Chase National Bank of the City of New York, by their respective attor-

neys, that the following facts shall be taken as true, for the purpose of this proceeding only:

1. Under date of December 14, 1939, The Chase National Bank of the City of New York (hereinafter called the Chase) for the account and risk of Reichsbank Direktorium agreed with the Irving Trust Company of New York to hold the said trust company harmless from any and all consequences arising from the payment of a draft of the said trust company without presentment of original and duplicate of the draft. In consideration of the said agreement the said trust company paid to the Chase, and the Chase credited to the deposit account in the name of Reichsbank Direktorium, \$2,211.70, the dollar equivalent of the said draft at the rate of 40c. The amount involved in the said indemnity agreement is \$2,211.70. The duplicate of the item thus paid being still outstanding, the Irving Trust Company has declined to release the Chase from the said indemnity agreement and the obligation of the Chase upon the same is still in effect.

2. The Deutsche Golddiskontbank is presently indebted to the Chase for custodian fees accruing, in respect of its custody account with the Chase, since January 1, 1942, [fol. 85] the amount thereof accrued as of January 29, 1948 being \$152.01, and such fees accruing thereafter at the rate of \$25 per annum.

Dated: New York, N. Y., March 16, 1948.

John F. X. McGohey, United States Attorney for the Southern District of New York, By Laurence H. Axman, Assistant United States Attorney, Attorney for Petitioner.

Milbank, Tweed, Hope & Hadley, By Timothy N. Pfeiffer, A Partner, Attorneys for Respondent, The Chase National Bank of the City of New York.

[fol. 86] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

TOM C. CLARK, Attorney General, as successor to the Alien
Property Custodian, Petitioner,

v.

FEDERAL RESERVE BANK OF NEW YORK, ET AL., Respondents.

TOM C. CLARK, Attorney General, as successor to the Alien
Property Custodian, Petitioner,

v.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, ET AL.,
Respondents.

STIPULATION

For the purposes of these causes, it is hereby Stipulated and Agreed as follows by and among the parties hereto, through their attorneys, subject to any objection with respect to materiality or relevancy which may hereafter be made by any party:

1. The motions of the respondent McCarthy for an order striking from the motion calendar petitioner's applications for relief and directing that any and all further proceedings herein proceed in accordance with the procedure laid down in the Federal Rules of Civil Procedure be and the same hereby are withdrawn.

[fol. 87] 2. The following document, a photostatic copy of which is attached to this stipulation and marked Exhibit "A," is genuine, and the facts stated therein are true:

Letter, dated February 25, 1942, from the Attorney General of the United States, signed for him by Francis J. McNamara, Special Assistant to the Attorney General, Alien Property Division, addressed to Messrs. Katz & Sommerich.

3. On January 7, 1942 respondent Zittman caused to be mailed to the Attorney General of the United States at Washington, D. C. a copy of the summons and complaint

in the action brought by Zittman in the Supreme Court of the State of New York for the County of Kings against the Deutsche Reichsbank, and the Deutsche Golddiskontbank, together with the notice and the order for service of summons by publication made in such action required by Rule 52 of the New York Rules of Civil Practice to be mailed to the Attorney General. Thereafter the Attorney General acknowledged receipt of said papers:

4: The following letter was sent on June 14, 1941, by Mr. D. W. Bell, Acting Secretary of the Treasury, to Mr. Januss Zoltowski, Financial Counsellor to the Polish Embassy, 14 Wall Street, New York, N. Y., and that the statements made therein reflected the policy of the Treasury Department:

Treasury Department,
Washington, June 14, 1941

Re: Commission for Polish Relief, Ltd. v. Banca Națională A României.

Dear Sir: Reference is made to your conference on June 6, 1941, with representatives of this Department relative to the above case and Executive Order No. 8389, as amended.

[fol. 88] This will confirm the advice furnished to you at such conference that in administering Executive Order No. 8389, as amended, and the regulations issued thereunder, the Treasury Department does not attempt to limit the bringing of suits in the courts of the United States, or of any of the states. However, in no event may any payment be made from any blocked account affected by such Executive Order except pursuant to a license authorizing such action.

Very truly yours, D. W. Bell, Acting Secretary
of the Treasury.

Mr. Januss Zoltowski, Financial Counsellor to the
Polish Embassy, 14 Wall Street, New York, N. Y.

5. From the inception of "freezing" controls, all litigants who, prior to commencing attachment actions against funds belonging to blocked nationals, had requested the Secretary of the Treasury to license an attachment, or levy,

received from the Treasury Department a response of the following nature:

Under Executive Order No. 8389, as amended, and the Regulations issued thereunder, no attempt is made to limit the bringing of suits in the courts of the United States or of any of the States. However, should you secure a judgment against one of the parties referred to in your letter, which is a country covered by the Order, or a national thereof, a license would have to be secured before payment could be made from accounts in banking institutions within the United States in the name of such country or national.

[fol. 89] 6. From the inception of "freezing" controls, the Secretary of the Treasury in administering the "freezing" control program adopted the position, in response to numerous requests made of him, that the bringing of an action, the issuance of a warrant of attachment therein, and the levy thereunder upon blocked property found within the jurisdiction of the court which issued the warrant were not forbidden but that a license was required to be secured before payment could be made from the blocked account to satisfy any judgment recovered in such action.

7. The Treasury Department has at various times issued licenses authorizing payment out of a blocked account of a blocked national for the purpose of making payment on a judgment recovered in an action where a prior warrant of attachment was issued and levied upon the blocked account of a blocked national therein notwithstanding that a particular license to institute the action and levy the attachment was not procured by a plaintiff and judgment-creditor. A license to institute the action and levy the attachment was in fact not required by the Treasury Department.

8. Following a judgment obtained by one Metallo-Chemical Corporation against a blocked national in an action in a New York court where a warrant of attachment was issued and levied upon a blocked account without first procuring from the Treasury Department a license to institute the action and to procure and levy the warrant of attachment therein, the Treasury Department issued license No. NY704109-T, a copy of which is attached hereto and marked Exhibit "B."

9. On December 22, 1941, without license from the Treasury Department, a warrant of attachment was issued in an action in a New York court instituted by Murray Oil [fol. 90] Products Co., Inc. against Mitsui & Co. Ltd., the bank balances of Mitsui & Co. Ltd. with the National City Bank and Chase National Bank were attached pursuant to the warrant of attachment, and a judgment was thereafter entered in favor of Murray Oil Products Co. against the debtor Mitsui & Co. Ltd. A license authorizing the issuance of the attachment was in fact not required by the Treasury Department. After the then Alien Property Custodian had issued, on August 17, 1942 Vesting Order No. 105 vesting in himself title to all property and assets of Mitsui & Co. Ltd. in the United States, and after the judgment became final, the Alien Property Custodian paid to the judgment-creditor an amount sufficient to satisfy the judgment.

10. In the plenary action brought by the respondent Zittman in the Supreme Court of the State of New York for the County of Kings against the Deutsche Reichsbank and Deutsche Golddiskontbank, a certified copy of the warrant of attachment was served upon the Chase National Bank of the City of New York on December 11, 1941 at 2:41 o'clock P. M. Eastern Standard Time and on the Federal Reserve Bank of New York on December 11, 1941 at 2:20 o'clock P. M. Eastern Standard Time. The funds, credits and property against which said warrants of attachment were levied had been received and held by the respondents Chase National Bank and Federal Reserve Bank of New York prior to the commencement of the war with Germany.

11. The Attorney General of the United States did not appear and did not take any steps in the actions brought by respondents McCarthy and Zittman in the Supreme [fol. 91] Court of the State of New York for Kings County in which the warrants of attachment were issued.

Katz & Sommerich, Counsel for respondent McCarthy, By: Henry I. Fillman, Joseph M. Cohen, Counsel for respondent Zittman, John F. X. McGoley, United States Attorney, Counsel for Tom C. Clark, Attorney General, Petitioner, By: Laurence H. Axman, Assistant United States Attorney, Thomas E. Harris.

[fol. 92] EXHIBIT A, ANNEXED TO STIPULATION

Department of Justice, Washington, D. C. msm, February
25, 1942

Address reply to "The Attorney General" and refer to initials and number.

FJ. McN.:JYCJr., 9-100-017-268.

Messrs. Katz & Sommerich, 120 Broadway, New York, New York.

Sirs:

This Department has received the following papers in the case of John F. McCarthy, plaintiff, against Reichsbank, defendant, now pending in the Supreme Court, Kings County, New York:

- (1) Notice pursuant to Rule 52 of the Rules of Civil Practice of New York;
- (2) Summons;
- (3) Complaint;
- (4) Affidavit in support of application for order of publication, with exhibits; and
- (5) Order for service of summons by publication.

[fol. 93] These papers were enclosed without accompanying letter, in an envelope bearing your name and address, directed to the Attorney General of the United States.

Respectfully, For the Attorney General, Francis J. McNamara, Special Assistant to the Attorney General, Alien Property Division.

[fol. 94] EXHIBIT B, ANNEXED TO STIPULATION

License No. N. Y. 704109-T

Date: July 21, 1945

LICENSE (Granted under the authority of Executive Order No. 8389 of April 10, 1940, as amended, and the regulations and rulings issued thereunder).

To, Gunther Jacobson (G.J. 7), Name of Licensee, 36 West 44th Street, New York 18, New York, Address of Licensee.

Sirs:

1. Pursuant to your application of June 11, 1945, the following transaction is hereby licensed:

The Irving Trust Company, New York City is hereby authorized to charge the account of Banque Transatlantique in Paris, France, \$3,705.44, plus interest, and pay that amount to the Sheriff of the City of New York, pursuant to the judgment obtained by Metallo-Chemical Corporation against Banque Transatlantique in Paris, France, dated April 23, 1941 to pay out the above funds as follows:

- (1) To himself for fees;
- (2) Balance to a domestic bank for credit to the blocked account of Metallo-Chemical Corporation.

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, [fol. 95] among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

4. This license expires 30 days from the date of its issuance, is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secretary of the Treasury:

Federal Reserve Bank of New York By (Illegible).

The Act of October 6, 1917, as amended, provides in part as follows:

“ * * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule [fol. 96] or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.”

Note: If this license covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with. Original.

[fol. 97] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

OPINION BY BONDY, D. J.—October 1, 1948

Honorable John F. X. McGohey, by Laurence H. Axman, Esq., Tom E. Harris, Esq., and Lewis Haffer, Esq., for Honorable Tom C. Clark, Attorney General.

Messrs. Milbank, Tweed, Hope & Hadley, by Timothy N. Pfeiffer, Esq., and Mrs. Rebecca M. Cutler, for The Chase National Bank of the City of New York.

Walter S. Logan, Esq., by Lyon Boston, Esq., for Federal Reserve Bank of New York.

Joséph M. Cohen, Esq., for Leo Zittman.

Sidney Posner, Esq., for John J. McCloskey, Jr., as Sheriff of the City of New York.

Messrs. Katz & Sommerich, by Henry I. Fillman, Esq., for John F. McCarthy.

BONDY, District Judge:

In one of the above entitled actions the Attorney General, as successor to the Alien Property Custodian, moves for a decree declaring that he is entitled to the possession of the balance remaining to the credit of the Deutsche Reichsbank on the books of the respondent Federal Reserve Bank of New York and in the other he moves for a decree declaring that respondents Zittman, McCarthy and McCloskey, as sheriff, did not obtain any lien or other interest in the Reichsbank-Direktorium or Deutsche Gold-diskontbank accounts on the books of the respondent Chase National Bank, and that the petitioner is entitled to the balances remaining in such accounts. Both proceedings [fol. 98] involve similar facts and similar questions of law. The motion papers disclose that there is not any dispute as to any of the material facts.

In December, 1941 Zittman brought an action in the Supreme Court of the State of New York, Kings County, as against the Deutsche Reichsbank and Deutsche Gold-diskontbank, German nationals, to recover money allegedly due him, and in January, 1942 McCarthy brought an action in the same court against the Deutsche Reichsbank to recover money allegedly due him. At the time of the commencement of these actions, the respondent McCloskey as

sheriff purported to levy on the balance due upon the accounts of the German banks in the respondent banks pursuant to attachments issued by the courts. The state courts ordered service of the summonses by publication, and judgments by default were entered in favor of Zittman on March 27, 1942 and in favor of McCarthy on April 24, 1942.

The accounts had been blocked under freezing controls of Executive Order No. 8389, 5 F. R. 1400, as extended to nationals of Germany by Executive Order No. 8785, 6 F. R. 2897, effective June 14, 1941, 12 U. S. C. A. Section 95a note. No license or other authorization for the payment of the judgments out of the blocked accounts was obtained and the respondent banks did not pay to the respondent sheriff any part of the balance due on the deposit accounts of the German banks.

On October 3, 1946 the Alien Property Custodian by an order vested in himself the indebtedness owing to the Reichsbank from the Chase Bank and on October 14, 1946 by an order vested in himself the indebtedness owing to the Golddiskontbank from the Chase Bank. Subsequent demands for payments of such indebtedness to the Custodian were refused by the Chase Bank unless the warrants of attachment issued in the actions brought by Zittman and McCarthy were released.

[fol. 99] On October 3, 1946 the Custodian by an order vested in himself the indebtedness owing to the Reichsbank from the Federal Reserve Bank. On demand the Federal Reserve Bank remitted to the Custodian the amount thereof less a sum withheld to cover the attachments in the Zittman and McCarthy actions.

By stipulation the objections to the procedure adopted by the Attorney General in these actions were withdrawn, and it was agreed that the Treasury Department from the inception of the freezing controls informed all litigants who, prior to the commencement of attachment actions against funds belonging to blocked nationals, had requested the Secretary of the Treasury to license an attachment that: "Under Executive Order No. 8389 as amended, and the Regulations issued thereunder, no attempt is made to limit the bringing of suits in the courts of the United States or of any of the States. However, should you secure a judgment against one of the parties referred to in your

letter, which is a country covered by the Order, or a national thereof, a license would have to be secured before payment could be made from accounts in banking institutions within the United States in the name of such country or national." It was also stipulated that the Treasury adopted the position that the bringing of an action, the issuance of a warrant of attachment therein and the levy thereunder upon blocked property found within the jurisdiction of the court which issued the warrant were not forbidden but that a license was required before payment could be made from the blocked account to satisfy any judgment recovered in such action, and that the Treasury Department has at various times issued a license authorizing payment out of a blocked account of a blocked national for the purpose of making payment on a judgment recovered in an action where a prior warrant of attachment was issued and levied upon the blocked account of a blocked national, notwithstanding that a license to institute the action and levy [fol. 100] the attachment was not procured by a plaintiff and judgment creditor, and further that a license to institute such action and levy the attachment was in fact not required by the Treasury Department and that the Attorney General did not appear and did not take any steps in the actions brought by respondents McCarthy and Zittman in the Supreme Court of the State of New York in which the warrants were issued, of which actions he was given notice in writing.

The respondents contend that the allegedly attached accounts are in the custody of the state court, that the petitioner seeks relief which would unlawfully interfere with that custody, that full faith and credit must be given to the state attachment proceedings, that the vesting of the property in the Custodian would result in the taking of property without due process of law and that accordingly the petitions must be dismissed.

Arguments similar to those urged in opposition to these motions were presented and considered in *Clark v. Proper*, 169 F. (2d) 324, affirming *Markham v. Taylor*, 70 F. Supp. 202. In that case the Circuit Court affirmed an order of Judge Cox granting a motion for summary judgment in an action seeking a declaration that a permanent receiver for an Austrian co-operative society had no title to or in-

terest in amounts owed to said society by an American association, notwithstanding that the receiver had been appointed to receive and reduce to his possession all the assets of the society by a New York State court judgment which, were it not for the fact that the accounts were blocked, would have vested all title to the property in the receiver, and notwithstanding that a suit brought by the receiver against the association to recover the sums allegedly due was pending in a New York State court. It was held that even if the subject matter of the controversy were in the custody of the state court, the federal court had jurisdiction to adjudicate the claim of the Custodian, *Markham v. Allen*, 326 U. S. 490, that Executive Order No. 8389, as amended, prohibiting the unlicensed transfer of an enemy alien's property, applies to transfers by judicial process, and that the Order was properly interpreted by Treasury Department General Ruling No. 12, April 21, 1942, 7 F. R. 2991, and by Treasury Department Public Circular No. 31, August 2, 1946, 11 F. R. 8351, both of which declare that judicial process cannot, without a license or other authorization from the Secretary, create any interest in blocked property. The court reached its conclusion even though it also was urged that the proceedings in the federal court constituted failure to accord full faith and credit to a judgment of the state court and that the vesting of the property in the Custodian would result in a taking of property without due process of law.

The court considers itself bound by that decision which expressly disagreed with the decision in *Singer v. Yokohama Specie Bank* 293 N. Y. 542, upon which respondents rely. *Polish Relief Comm. v. Banca Nationala A. Rumaniei*, 288 N. Y. 332, also relied on by respondents, states that Executive Order No. 8389 "must be taken to have deprived the defendant of power to transfer any interest in these blocked accounts except through the medium of assignment subject to a releasing of the credit by the Secretary of the Treasury." The United States as *amicus curiae* supported the attachment involved in that case as inoffensive to national policy. The United States however in the instant cases denies that any rights were acquired by virtue of the attachments. The fact that the Treasury Department advised prospective litigants that no license was necessary to bring suit and secure the issuance of a warrant of at-

attachment does not estop the petitioner from taking this position since it is consistent with General Ruling No. 12(4) [fol. 102] which specifically provides that while a transfer of blocked property shall be valid and enforceable for the purpose of determining for the parties to an action the rights and liabilities litigated, no attachment, judgment, or other judicial process shall confer any greater interest in any blocked property than the owner of such property could created by voluntary act prior to the issuance of a license.

Because the attachments by the sheriff did not transfer any right, title or interest in the blocked property, his application for payment of his fees by the Custodian must be denied.

The Chase National Bank claims the right to set off against the Custodian's claims a contingent liability on a guaranty made by it for the account of the Reichsbank to the Irving Trust Company against loss arising from the payment by said trust company of a draft without presentation of the original and duplicate. The guaranty of the Chase Bank to Irving Trust Company does not create any banker's lien or set-off to the claim of the Custodian to the assets of the Reichsbank. See *Clark v. Manufacturers Trust Company*, decided by the Court of Appeals for the Second Circuit, August 5, 1948.

The Chase Bank also claims custodian fees accruing in connection with the Golddiskontbank's custody account. The Attorney General having consented to the deduction of the fees without conceding that they are deductible as a matter of right, it becomes unnecessary for the court to pass upon the claim for the allowance.

The motions accordingly are granted subject to the allowance of custodian fees pursuant to the consent of the petitioner.

October 1, 1948.

/s/ Wm. Bondy, United States District Judge.

[fol. 103] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 44-617

TOM C. CLARK, Attorney General, as Successor to the Alien Property Custodian, Petitioner,

v.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, and JOHN J. McCLOSKEY, JR., as Sheriff of the City of New York, and LEO ZITTMAN and JOHN F. MCCARTHY, Respondents

FINAL DECREE APPEALED FROM—January 13, 1949

This cause having come on for hearing on March 5 and March 17, 1948, before the Honorable William Bondy, District Judge, on order to show cause issued pursuant to the petition of Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, and the court having examined the pleadings, stipulations of fact and other papers on file and having heard the arguments of counsel and being otherwise fully advised and satisfied in premises and having rendered an opinion in writing dated October 1, 1948, now, therefore, it is Ordered, Adjudged, Decreed and Declared:

1. That by Virtue of Executive Order No. 8389, as amended, and regulations and rulings issued thereto the respondents Leo Zittman and John J. McCloskey, Jr., as sheriff of the City of New York, obtained no lien or other interest in or to any account maintained by Deutsche Reichsbank or by Deutsche Golddiskontbank with the respondent The Chase National Bank of the City of New [fol. 104] York nor in the funds represented thereby as a result of the issuance and levy of a warrant of attachment on December 11, 1941, in a cause entitled "*Zittman v. Deutsche Reichsbank and Deutsche Golddiskontbank*," No. 16183-1941, Supreme Court of New York, Kings County, nor by any service or levy of or under said warrant of attachment nor by any other proceedings in said cause; that by virtue of Executive Order No. 8389, as amended, and regulations and rulings issued thereto, the respondents John F. McCarthy and John J. McCloskey, Jr., as sheriff

of the City of New York, obtained no lien or other interest in or to said accounts nor in the funds represented thereby as a result of the issuance of a warrant of attachment on or about January 21, 1942 in a cause entitled "*McCarthy v. Deutsche Reichsbank*," No. 719-1942, Supreme Court of New York, Kings County, nor by any service or levy of or under said warrant of attachment nor by any other proceedings in said cause, and that none of the said respondents have any right, title or interest in or to said accounts.

2. That by virtue of Vesting Order No. 7792 the petitioner, Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, succeeded to all right, title and interest in and to that debt or other obligation owing on the effective date of said order to Deutsche Reichsbank by the respondent The Chase National Bank of the City of New York arising out of (a) a dollar checking account entitled Reichsbank Directorium, (b) a dollar checking account entitled Deutsche Reichsbank Wertpapierabteilung FS 62971 and (c) a dollar checking account entitled General Ruling No. 6 Account, Deutsche Reichsbank Wertpapierabteilung F62971, together with dividends and accumulations, if any, arising out of the said vested accounts.

[fol. 105] 3. That by virtue of Vesting Order No. 7870 the petitioner, Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, succeeded to all right, title and interest in and to that debt or other obligation owing on the effective date of said Order to Deutsche Golddiskontbank by respondent The Chase National Bank of the City of New York arising out of a dollar checking account entitled Deutsche Golddiskontbank, together with dividends and accumulations, if any, arising out of the said vested account.

4. That petitioner, Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, by virtue of the respective vesting order is entitled to the entire balance in the said accounts of Deutsche Reichsbank, as shown on the books of The Chase National Bank of the City of New York to have existed on the effective date of Vesting Order No. 7792, together with dividends and accumulations, if any, arising out of the said vested accounts, and to the entire balance in the said account of Deutsche Golddiskontbank, as shown on the books of The Chase National Bank of the City of New York to have existed on the effective

date of Vesting Order No. 7870, together with dividends and accumulations, if any, arising out of the said vested account, less the amounts due to the said Chase National Bank for custodian fees accruing up to the time when the balance in said account is paid to petitioner (the amount of such fees to January 29, 1948 being \$152.01 and said fees accruing thereafter at the rate of \$25 a year).

[fol. 106] 5. That the application of the respondent McCloskey, as Sheriff of the City of New York, for payment of fees be, and the same hereby is, denied.

6. That no costs shall be allowed to any party herein.

Dated: New York, N. Y., January 13th, 1949.

Wm. Bondy, U. S. D. J.

Judgment entered, William V. Connell, Clerk, Jan. 20, 1949.

[fol. 107] UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK

NOTICE OF APPEAL BY JOHN F. MCCARTHY—March 2, 1949

Sirs:

Notice is hereby given that John F. McCarthy, one of the respondents above-named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the final decree dated January 13, 1949 and entered herein on January 20, 1949.

Dated, New York, N. Y., March 2, 1949.

Yours, etc., Katz & Sommerich, Attorneys for Respondent, John F. McCarthy, Office & P. O. Address: 120 Broadway, New York 5, N. Y.

[fol. 108] To: John F. X. McGohey, Esq., United States Attorney, Attorney for Petitioner, United States Courthouse, Foley Square, New York, N. Y.

Milbank, Tweed, Hope & Hadley, Esqs., Attorneys for Respondent, The Chase National Bank of the City of New York, 15 Broad Street, New York 7, N. Y.

Sidney Posner, Esq., Attorney for the Respondent, John J. McCloskey, Jr., as Sheriff of the City of New York,

Hall of Records, 31 Chambers Street, New York 7, N. Y.
 Joseph M. Cohen, Esq., Attorney for Respondent, Leo Zittman, 36 West 44th Street, New York 18, N. Y.
 Clerk of the United States District Court, Southern District of New York, United States Courthouse, Foley Square, New York, N. Y.

[fol. 109] UNITED STATES DISTRICT COURT, SOUTHERN
 DISTRICT OF NEW YORK

NOTICE OF APPEAL BY LEO ZITTMAN—March 7, 1949

Sirs:

Notice is hereby given that Leo Zittman, one of the respondents above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the final decree dated January 13, 1949 and entered herein on January 20, 1949.

Dated, New York, N. Y., March 7, 1949.

Yours, etc., Joseph M. Cohen, Attorney for Respondent, Leo Zittman, Office & P. O. Address:
 36 West 44th Street, New York 18, N. Y.

[fol. 110] To: John F. X. McGohey, Esq., United States Attorney, Attorney for Petitioner, United States Courthouse, Foley Square, New York, N. Y.

Milbank, Tweed, Hope & Hadley, Esqs., Attorneys for Respondent, The Chase National Bank of the City of New York, 15 Broad Street, New York 7, N. Y.

Sidney Posner, Esq., Attorney for the Respondent, John J. McCloskey, Jr., as Sheriff of the City of New York, Hall of Records, 31 Chambers Street, New York 7, N. Y.

Katz & Sommerich, Esqs., Attorneys for Respondent, John F. McCarthy, 120 Broadway, New York 5, N. Y.

Clerk of the United States District Court, Southern District of New York, United States Courthouse, Foley Square, N. Y., N. Y.

[fol. 111] UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK

NOTICE OF APPEAL BY JOHN J. McCLOSKEY—March 11, 1949

Sirs:

Notice is hereby given that John J. McCloskey, as Sheriff of the City of New York, one of the respondents above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the final decree dated January 13, 1949 and entered herein on January 20, 1949.

Dated, New York, N. Y., March 11, 1949.

Yours, etc., Sidney Posner, Attorney for Respondent, John J. McCloskey, as Sheriff of the City of New York, Office & P. O. Address: Hall of Records, 21 Chambers Street, New York 7, N. Y.

[fol. 112] To: John F. X. McGohey, Esq., United States Attorney, Attorney for Petitioner, United States Courthouse, Foley Square, New York, N. Y.

Milbank, Tweed, Hope & Hadley, Esqs., Attorneys for Respondent, The Chase National Bank of the City of New York, 15 Broad Street, New York 7, N. Y.

Joseph M. Cohen, Esq., Attorney for Respondent, Leo Zittman, 36 West 44th Street, New York 18, N. Y.

Katz & Sommerich, Esqs., Attorneys for Respondent, John F. McCarthy, 120 Broadway, New York 5, N. Y.

Clerk of the United States District Court, Southern District of New York, United States Courthouse, Foley Square, N. Y., N. Y.

[fol. 113] UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK

STIPULATION AS TO RECORD—Sept. 30, 1949

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties to the appeals herein, the Chase National Bank of the City of New York not having appealed from the decree

dated January 13, 1949 and the time within which to appeal having expired.

Dated, New York N. Y., November 30, 1949.

John F. X. McGohery, Attorney for Petitioner-Appellee.

Sidney Posner, Attorney for Respondent-Appellant,
John J. McCloskey, Jr.

Joseph M. Cohen, Attorney for Respondent-Appellant, Leo Zittman.

Katz & Sommerich, Attorneys for Respondent-Appellant, John F. McCarthy.

[fol. 114] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1] IN THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

J. HOWARD McGRATH, Attorney General, as successor to the
Alien Property Custodian, Petitioner-Appellee,

against

FEDERAL RESERVE BANK OF NEW YORK, and JOHN J. McCLOSKEY, Jr., as Sheriff of the City of New York, and LEO ZITTMAN, and JOHN F. MCCARTHY, Respondents-Appellants.

STATEMENT UNDER RULE XV

This cause was commenced on or about January 23, 1948.

The order to show cause issued pursuant to the petition of Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, petitioner-appellee, was filed on January 30, 1948. The answer of the respondent-appellant, John F. McCarthy, was filed on February 6, 1948. The answer of the respondent-appellant, Leo Zittman, was filed on February 27, 1948. The amended answer of the respondent-appellant, John J. McCloskey, Jr., as Sheriff of the City of New York, was filed on October 20, 1948. The response of the Federal Reserve Bank of New York to the order to show cause was filed on October 20, 1948.

The respondents have not been arrested nor has any bail been taken or property attached or arrested.

[fol. 2] The original parties to this cause are those set forth in the caption hereof, except that Tom C. Clark, as Attorney General was the original petitioner below and appellee herein and he was substituted by J. Howard McGrath, who succeeded him as Attorney General since the appeals herein were taken.

The cause came on for hearing on March 5 and March 17, 1948, before the Honorable William Bondy, District Judge.

No question was referred to a Commissioner, Master or Referee.

The final decree was entered on January 20, 1949.

The appeal was taken by the respondent, John F. McCarthy, by notice of appeal filed March 2, 1949; the appeal was taken by the respondent, Leo Zittman, by notice of appeal filed March 7, 1949; and the appeal was taken by the respondent, John J. McCloskey, Jr., as Sheriff of the City of New York, by notice of appeal filed March 18, 1949. The respondent Federal Reserve Bank of New York has not appealed.

[fol. 3] IN THE UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK

TOM C. CLARK, Attorney General, as successor to the Alien
Property Custodian, Petitioner,

v.

FEDERAL RESERVE BANK OF NEW YORK, and JOHN J. McCLOSKEY, Jr., as Sheriff of the City of New York, and LEO ZITTMAN, and JOHN F. MCCARTHY, Respondents.

ORDER TO SHOW CAUSE—January 23, 1948

Upon the annexed petition of Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, by his attorney, John F. X. McGohey, United States Attorney for the Southern District of New York, sworn to on the 23rd day of January, 1948, and the exhibits annexed thereto, and good cause appearing therefor, it is

Ordered that the respondents herein, Federal Reserve Bank of New York, John J. McCloskey, Jr., Leo Zittman and John F. McCarthy, respectively, show cause at a motion term of this Court to be held in Room 506, United States Court House, Foley Square, Borough of Manhattan, City of New York, at 10:30 A. M. on the 6th day of February, 1948, or as soon thereafter as counsel may be heard, why a decree should not be entered herein declaring that by virtue of Vesting Order No. 7794, the Turnover Directive issued pursuant thereto, and the letter of October 14, 1946, of the then Alien Property Custodian, petitioner is entitled to possession of the entire balance [fol. 4] remaining in the Deutsche Reichsbank accounts on the books of the respondent Federal Reserve Bank of New York together with all accrued dividends and accumulations, and for such other and further relief as the Court may deem just.

Service of a copy of this order upon the respondents together with copies of the papers upon which it is based, on or before January 30th, 1948 shall be deemed sufficient.

Dated: New York, N. Y., January 23rd, 1948.

John Bright, U. S. D. J.

[fol. 5] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

PETITION

Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, by his attorney, John F. X. McGohey, United States Attorney for the Southern District of New York, prays for an order to show cause against the above-named respondents for the following grounds:

1. This Court has jurisdiction under Section 17 of the Trading with the Enemy Act of October 6, 1917, as amended (40 Stat. 425; United States Code, Title 50, Appendix, Section 17) and under the Federal Declaratory Judgment Act of June 14, 1934, as amended (48 Stat. 955; United States Code, Title 28, Section 400).

2. Respondent Federal Reserve Bank of New York is a federal reserve bank established under the laws of the

United States, with its principal place of business in the City of New York, State of New York, within this District.

3. Respondent John J. McCloskey, Jr., is the duly appointed, qualified and acting Sheriff of the City of New York, and in such capacity is, among other things, the immediate successor of Daniel E. Finn, Jr., as Sheriff of the County of New York, with full power by operation of law to complete the unfinished business of the latter's office; and is a resident of the State of New York.

4. Respondent Leo Zittman is, upon information and belief, a resident of the State of New York.

5. Respondent John F. McCarthy, Jr., is, upon information and belief, a resident of the State of New York.

[fol. 6] 6. For some time prior to December 7, 1941, the Deutsche Reichsbank, the Central Bank of Germany, a non-resident of the State of New York, maintained four deposit accounts with respondent Federal Reserve Bank of New York. With the application of the "freezing" controls of Executive Order No. 8389 (5 Federal Register 1400) to nationals of Germany by Executive Order No. 8785 (6 Federal Register 2897), effective June 14, 1941, these accounts became "blocked," the transfer of any interest therein was prohibited, and transactions relating thereto were forbidden except as specifically authorized by the Secretary of the Treasury. The balances in the Reichsbank accounts totalled \$862,469.61 on December 11, 1941, and \$953,683.07 on January 21, 1942.

7. That on or about December 11, 1941, respondent Leo Zittman commenced an action in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank (Action No. 16183-1941). Pursuant to a warrant of attachment procured by respondent Zittman, the Sheriff of the County of New York, then Daniel E. Finn, Jr., on or about December 11, 1941, purported to levy upon said accounts of Deutsche Reichsbank by serving a certified copy of a warrant of attachment upon the respondent Federal Reserve Bank of New York. Thereafter, on March 27, 1942, and following the service by publication and mailing of the summons in said action upon Deutsche Reichsbank, judgment by default for \$94,609.37 in favor of respondent Zittman was entered against Reichsbank.

8. No specific authorization from Foreign Funds Control for the acquisition of any interest in the "blocked" ac-

counts or the funds represented thereby was ever obtained by respondent Zittman, nor was any license ever obtained authorizing respondent Federal Reserve Bank to pay the said judgment out of the "blocked" accounts (Exhibit A). To date no execution has been had on the judgment.

[fol. 7] 9. On or about January 20, 1942, respondent John F. McCarthy commenced an action in the Supreme Court of the State of New York Kings County, against Deutsche Reichsbank (Action No. 719-1942). Pursuant to a warrant of attachment procured by respondent McCarthy, the Sheriff of the City of New York, respondent, John J. McCloskey Jr., on or about January 21, 1942, purported to levy upon said accounts of Deutsche Reichsbank by serving a certified copy of a warrant of attachment upon the respondent Federal Reserve Bank of New York. Thereafter, on April 24, 1942, and following the service by publication and mailing of the summons in said action upon Deutsche Reichsbank, judgment by default for \$29,660.21 in favor of respondent McCarthy was entered.

10. On May 29, 1942, the Foreign Funds Control of the United States Treasury Department denied Application No. NY401383 of respondent McCarthy dated April 25, 1942, for a license authorizing respondent Federal Reserve Bank of New York to pay the said judgment out of the "blocked" accounts. No other specific authorization from Foreign Funds Control for the acquisition of any interest in the "blocked" accounts or the funds represented thereby was ever obtained by respondent McCarthy, nor was any license ever obtained to authorize respondent Federal Reserve Bank to pay the said judgment out of the "blocked" accounts (Exhibit B). To date no execution has been had on the judgment.

11. James E. Markham, then Alien Property Custodian of the United States, on October 3, 1946, executed Vesting Order No. 7794 (11 Federal Register 11782) vesting the debts or other obligations owing to Deutsche Reichsbank by the respondent Federal Reserve Bank of New York arising out of the said bank accounts, including any and all rights to demand, enforce and collect the same (Exhibit C). On October 14, 1946, the Custodian issued [fol. 8] a Turnover Directive addressed to the respondent Bank which recited the pertinent provisions of Vesting Order No. 7794, determined that the proceeds of the account

obligations of the Bank to Deutsche Reichsbank in the total principal amount of \$1,003,382.78 are property that was vested by said Vesting Order, and required that said property, together with all dividends, accumulations and increments be forthwith turned over to the Custodian (Exhibit D). A copy of the Vesting Order, and the Turnover Directive, were served upon the respondent Bank under covering letter of the same date (Exhibit E).

12. By Executive Order No. 9788, effective October 15, 1946 (11 Federal Register 11981) all authority, rights, privileges, powers, duties and functions vested in the Office of Alien Property Custodian were vested, transferred and delegated to the Attorney General, and all property or interests vested in or transferred to the Alien Property Custodian or seized by him were transferred to the Attorney General.

13. Under date of June 11, 1947, respondent Federal Reserve Bank of New York acknowledged receipt of the letter of October 14, 1946, of the Vesting Order and the Turnover Directive, and in purported compliance with the Turnover Directive, transmitted to the Assistant Attorney General and Director of the Office of Alien Property two checks in the amounts of \$49,744.71 and \$653,638.07, respectively, but expressly withheld a balance of \$300,000 standing in the account of the Reichsbank on the books of the respondent Bank as of that date (Exhibit F):

14. Respondent Federal Reserve Bank still refuses to comply in full with Vesting Order No. 7794, the Turnover Directive, and the letter of October 14, 1946.

15. No previous application has been made for the relief herein requested.

[fol 9] Wherefore, the petitioner prays that an order issue requiring the respondents to show cause why a decree should not be entered declaring that by virtue of Vesting Order No. 7794, the Turnover Directive and the letter of October 14, 1946, the petitioner is entitled to possession of the entire balance remaining in the Deutsche Reichsbank account on the books of the respondent Federal Reserve Bank of New York, together with all accrued dividends and accumulations.

John F. X. McGohey, United States Attorney for the Southern District of New York, By Lawrence H. Axman, Assistant United States Attorney, Attorney for Petitioner.

[fol. 10] EXHIBIT A, ANNEXED TO PETITION

I, John S. Richards, certify that I am the Director of Foreign Funds Control, Treasury Department, Washington, D. C., and as such have custody of the records and files of Foreign Funds Control and that I have caused diligent search to be made of the records and files of Foreign Funds Control, and no record or entry has been found to exist therein that any specific authorization was ever obtained from this office by Leo Zittman for the acquisition of any interest in any deposit accounts maintained in the name of the Deutsche Reichsbank by the Federal Reserve Bank of New York or in the funds represented thereby or that licenses were ever obtained authorizing the Federal Reserve Bank to pay any judgment in favor of said Zittman out of such "blocked" accounts.

John S. Richards.

Subscribed and sworn to before me at Washington, D. C. this 15 day of January, 1948.

(Seal) Pearl W. Field (officer administering oath)

My Commission expires June 21, 1948.

[fol. 11] EXHIBIT B, ANNEXED TO PETITION

I, John S. Richards, certify that I am the Director of Foreign Funds Control, Treasury Department, Washington, D. C., and as such have custody of the records and files of Foreign Funds Control and that I have caused diligent search to be made of the records and files of Foreign Funds Control, and no record or entry has been found to exist therein that any specific authorization was ever obtained from this office by John F. McCarthy for the acquisition of any interest in any deposit accounts maintained in the name of the Deutsche Reichsbank by the Federal Reserve Bank of New York or in the funds represented thereby or that licenses were ever obtained authorizing the Federal Reserve Bank to pay any judgment in favor of said McCarthy out of such "blocked" accounts. Our records however, disclose that on May 29, 1942, this office denied Application No. NY401383, filed by Henry I. Fill-

man, attorney for said McCarthy, dated April 25, 1942, for a license authorizing the Federal Reserve Bank to pay out of said blocked accounts a portion of a judgment obtained in favor of said McCarthy in an action in the Supreme Court of the State of New York, Kings County, entitled, "John F. McCarthy, plaintiff, against Reichsbank, defendant."

John S. Richards

Subscribed and sworn to before me at Washington, D. C., this 15 day of January 1948.

(Seal) Pearl W. Field (officer administering oath)

My Commission expires June 21, 1948.

[fol. 12] EXHIBIT C, ANNEXED TO PETITION

UNITED STATES OF AMERICA, OFFICE OF ALIEN PROPERTY
CUSTODIAN

Vesting Order Number 7794

Re: Obligations owned by Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium

Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation finding:

1. That Deutsche Reichsbank, also known as Reichsbank and as Reichsbank-Direktorium, the last known address of which is Berlin, Germany, is a corporation organized under the laws of Germany, and which has or, since the effective date of Executive Order No. 8389, as amended, has had its principal place of business in Germany and is a national of a designated enemy country (Germany);
2. That the property described as follows:
 - a. Those certain debts or other obligations owing to Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium, by Federal Reserve

Bank of New York, New York 7, New York, arising out of bank accounts entitled Reichsbank, Reichsbank Special Account, Reichsbank-Direktorium, Standstill Account 1938 No. 2 and Reichsbank-Direktorium, Standstill Account 1938 No. 3, and any and all rights to demand, enforce and collect the same, and

- b. Those certain debts or other obligations evidenced by the checks or other credit instruments endorsed by the aforesaid Deutsche Reichsbank and presently [fol. 13] held by the Federal Reserve Bank of New York, New York 7, New York, for collection and credit to the aforesaid Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium, which checks or other credit instruments are identified in Exhibit A, attached hereto and by reference made a part hereof, together with all rights in, to and under, including particularly, but not limited to, the rights to possession and presentation for collection and payment of the aforesaid checks or other credit instruments and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country;

And determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany);

And having made all determinations and taken all action required by law, including appropriate consultation and certification, and deeming it necessary in the national interest,

Hereby Vests in the Alien Property Custodian the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States.

Such property and any or all of the proceeds thereof

shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. [fol. 14] This Order shall not be deemed to constitute an admission by the Alien Property Custodian of the lawfulness of, or acquiescence in, or licensing of, any set-offs, charges or deductions, nor shall it be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when it should be determined to take any one or all of such actions.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Executed at Washington, D. C., on October 3, 1946.

Signed, James E. Markham, Alien Property Custodian.

I hereby certify that the within is a true and correct copy of the original paper on file in this office. For the Attorney General David L. Bazelon, Assistant Attorney General Director, Office of Alien Property.

By Loyola M. Blanton, Assistant Secretary of Records.

(Official Seal)

[fol. 15]

Re: Obligations owned by Deutsche Reichsbank, also known
as Reichsbank, and as Reichsbank-Direktorium

EXHIBIT A

Schedule of Checks or Other Credit Instruments Held by Federal Reserve Bank
of New York for Collection and Credit

Date of Check	Drawer	Number	Drawee	Amount
7/15/41	American Embassy	2367	Treasurer U.S.	\$1,000.00
	Naval Attache	58-763		
7/16/41	War Finance Officer USA	1052	" "	686.26
		210-366		
7/15/41	American Embassy	2366	" "	600.00
	Naval Attache	58-763		
7/17/41	War Finance Officer USA	1053	" "	17.45
		210-366		
6/30/41	Special Disb. Officer	4528	" "	252.37
		09-075		
6/30/41	" "	4502	" "	161.23
		09-075		
3/31/41	" "	4129	" "	167.31
		09-075		
6/23/41	" "	4427	" "	111.26
		09-075		
4/30/41	" "	4256	" "	133.98
		09-075		
6/30/41	" "	4522	" "	84.37
		09-075		
[fol. 16]				
6/30/41	" "	4493	" "	126.56
		09-075		
6/30/41	" "	4492	" "	130.27
		09-075		
7/24/41	" "	4563	" "	655.96
		09-121		
7/25/41	" "	4564	" "	278.07
		09-121		
7/28/41	Jeanette Pohlman		Riggs N/B Washington	40.00
7/31/41	Special Disb. Officer	4645	Treasurer U.S.	97.70
		09-121		
7/31/41	" "	4662	" "	135.24
		09-121		
7/31/41	" "	4663	" "	94.67
		09-121		
7/31/41	" "	4664	" "	130.51
		09-121		
7/31/41	" "	4665	" "	54.10
		09-121		
7/31/41	" "	4666	" "	40.57
		09-121		
7/31/41	" "	4667	" "	33.81
		09-121		
7/31/41	" "	4619	" "	130.27
		09-121		
7/31/41	" "	4634	" "	118.12
		09-121		
[fol. 17]				
7/31/41	" "	4633	" "	113.98
		09-121		
8/ 8/41	War Finance Officer	1102	" "	256.83
		210-366		

Date of Check	Drawer	Number	Drawee	Amount
8/—/41	Jeanette Pohlman		Riggs N/B Washington	120.00
8/25/41	Special Disb. Officer	4683	Treasurer U.S.	133.62
8/31/41	" "	09-121	" "	84.37
8/31/41	" "	4767	" "	
		09-121	" "	130.27
8/31/41	" "	4742	" "	
		09-121	" "	211.07
7/31/41	War Finance Officer	1084	" "	
		210-366	" "	208.18
6/30/41	Special Disb. Officer	4501	" "	
		09-075	" "	94.67
8/31/41	" "	4792	" "	
		09-121	" "	40.57
8/31/41	" "	4795	" "	
		09-121	" "	135.24
8/31/41	" "	4791	" "	
		09-121	" "	130.51
8/31/41	" "	4793	" "	
		09-121	" "	54.10
8/31/41	" "	4794	" "	
		09-121	" "	33.81
8/31/41	" "	4796	" "	
		09-121	" "	
[fol. 18]				
10/ 1/40	Chief Disb. Officer	5,226,484	" "	33.32
		894-404	" "	
9/ 1/40	" "	5,079,849	" "	33.32
		894-404	" "	
9/12/41	Special Disb. Officer	4872	" "	151.87
		09-121	" "	
7/30/41	Jeanette Pohlman		Riggs N/B, Wash., D. C.	30.00
7/28/41	American Embassy Commissary Berlin signed W. S. Howard		" "	2,250.60
7/29/41	Cyrus B. Follmer		Guaranty Tr. Co. of N. Y. 5th Avenue Branch	225.00
7/30/41	Phillip N. Fahrenheit		Riggs N/B, Wash., D. C.	250.00
8/ 2/41	G. Edith Bland		American Sec. & Tr. Co., Wash., D. C. (Central Branch)	200.00
7/31/41	Spec. Disb. Officer	4628	Treasurer U.S.	126.56
		09-121	" "	
7/31/41	" "	4622	" "	130.27
		09-121	" "	
7/31/41	" "	4620	" "	126.56
		09-121	" "	
7/31/41	Amer Embassy	2382	" "	50.62
	Naval Att. Berlin	58-763	" "	
7/31/41	Spec. Disb. Officer	4647	" "	89.55
		09-121	" "	
7/31/41	Finance Off. U.S.A.	1056	" "	352.80
		210-366	" "	
[fol. 19]				
7/31/41	Amer. Embassy	2383	" "	50.62
	Naval Att. Berlin	58-763	" "	
7/31/41	Finance Off. U.S.A.	1067	" "	38.51
		210-366	" "	
7/31/41	Spec. Disb. Officer	4578	" "	547.69
		09-121	" "	
6/30/41	" "	4521	" "	84.37
		09-075	" "	
5/31/41	" "	4391	" "	84.37

Date of Check	Drawer	Number	Drawee	Amount
11/30/40	" "	09-075 3657	" "	101.74
7/31/41	" "	09-075 4600	" "	339.24
8/14/41	Carlton Hurst, Miami, Florida	09-121	Florida Nat'l Bk. & Tr. Co. Miami, Florida	100.00
8/14/41	Carlos T. Warner Acct. # 114435		Washington Loan & Tr. Co. Washington, D. C.	400.00
8/15/41	Disb. Off.	2908	Treasurer U.S.	50.62
8/15/41	" "	58-763 2918	" "	50.62
6/30/41	Spec. Disb. Officer	4510 09-075	" "	238.77
8/19/41	Jack Wade Demanoy		Riggs N/B, Washington, D. C.	200.00
8/16/41	Disb. Off.	2920 58-763	Treasurer U.S.	24.40
10/10/41	Lena C. Paul		Manufacturers Tr. Co., N. Y. 131 East 23rd St., N. Y.	125.00

[fol. 20] EXHIBIT D, ANNEXED TO PETITION

Office of Alien Property Custodian
Washington

Turn-Over Directive

Re: Property of Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium Vesting Order Number 7794 (11 Fed. Reg. 11782, October 10, 1946).

To: Federal Reserve Bank of New York
New York 7, New York

The undersigned, under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, and having made all the determinations and taken all action, after appropriate consultation and certification, required by said Executive Order and Act, or otherwise, executed and issued Vesting Order No. 7794 dated October 3, 1946 (a copy of which is annexed hereto and made a part hereof), and thereby vested the following described property of Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium, a national of a designated enemy country (Germany):

a. Those certain debts or other obligations owing to Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium, by Federal Reserve Bank

of New York 7, New York, arising out of bank accounts more particularly identified in sub-paragraph 2-a of said Vesting Order Number 7794, and any and all rights to demand, enforce and collect the same, and

b. Those certain debts or other obligations evidenced by the checks or other credit instruments identified in Exhibit A, attached to and by reference made a [fol. 21] part of said Vesting Order Number 7794, together with all rights in, to and under, including particularly, but not limited to, the rights to possession and presentation for collection and payment of the aforesaid checks or other credit instruments and any and all rights to demand, enforce and collect the same.

Under the authority above set forth, the undersigned does hereby find and determine that the following described property (hereinafter referred to as the said property), to-wit:

- a. The proceeds of the above-described obligations of said Federal Reserve Bank of New York, in the total principal amount of \$1,003,382.78, represented by the above-mentioned bank accounts in the amounts of \$334,801.22, \$667,904.15, \$672.55 and \$4.86, respectively, and
- b. All those checks or other credit instruments identified in Exhibit A, attached to and by reference made a part of said Vesting Order Number 7794,

now in your possession or under your control is property that was vested in the undersigned by the said vesting order.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Your attention is invited to Section 5(b) of the Trading with the enemy Act, as amended, which provides that

"Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any [fol. 22] rule, regulation, instruction, or direction is

sued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder."

The undersigned does hereby require that the said property, together with all dividends, accumulations and increment thereon, shall forthwith be by you turned over to the undersigned to be held, administered and accounted for as provided by law.

Executed at Washington, D. C., on October 4, 1946.

(Signed) James E. Markham, Alien Property Custodian.

I hereby certify that the within is a true and correct copy of the original paper on file in this office.

For the Attorney General, David L. Bazelon, Assistant Attorney General, Director, Office of Alien Property.

By Donald Shaw, Secretary.

(Seal.)

[fol. 23] EXHIBIT E, ANNEXED TO PETITION

October 14, 1946

In replying, please refer to: JEM:WJR:AFW:rf

F-28-1282-C-3 V.O. No. 7794

Federal Reserve Bank of New York, New York 7, New York.

Gentlemen:

Enclosed is a certified copy of Vesting Order No. 7794 executed October 3, 1946 by the Alien Property Custodian, vesting in himself as Alien Property Custodian "Obligations owned by Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium," together with the signed original Turn-over Directive, directed to the Federal Reserve Bank, New York 7, New York.

For the purpose of identifying Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium on the books and records of the Alien Property Custodian, Account No. 28-18101 has been assigned.

With reference to those certain debts or other obligations owing to Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium, by Federal Reserve Bank of New York, New York 7, New York, arising out of bank accounts entitled Reichsbank, Reichsbank Special Account, Reichsbank-Direktorium, Standstill Account 1938 No. 2, and Reichsbank-Direktorium, Standstill, Account 1938 No. 3, more fully described in sub-paragraph 2(a) of Vesting Order No. 7794 and sub-paragraph (a) of the Turn-over Directive, you are authorized and directed to forward your check for those amounts to the Alien Property Custodian, Washington, D. C., attention of the Property Division. The check should be made payable to the "Alien Property Custodian, Washington, D. C., Account No. 28-18101."

[fol. 24] With reference to those certain debts or other obligations evidenced by the checks or other credit instruments endorsed by the aforesaid Deutsche Reichsbank and presently held by the Federal Reserve Bank of New York, New York 7, New York, for collection and credit to the aforesaid Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium, more fully described in subparagraph 2(b), Exhibit A, of Vesting Order No. 7794 and sub-paragraph (b) of the Turn-over Directive, you are further authorized and directed to forward those checks and-or other credit instruments to the Alien Property Custodian, Washington, D. C., attention of the Property Division.

Please sign the acknowledgment on the attached copy of this letter and return same in the franked addressed envelope enclosed for that purpose and advise this office of your action in the matter.

Very truly yours, James E. Markham, Alien Property Custodian.

Enclosures

Receipt is hereby acknowledged of the original of this letter and of a certified copy of Vesting Order No. 7794 this 15th day of October 1946.

Federal Reserve Bank of New York, By /s/ Walter S. Logan, Vice President and General Counsel

[fol. 25] EXHIBIT F, ANNEXED TO PETITION

FEDERAL RESERVE BANK OF NEW YORK

New York 45, N. Y.

June 11, 1947.

Mr. David L. Bazelon, Assistant Attorney General, Director of Office of Alien Property, Department of Justice, Washington 25, D. C.

Dear Sir:

In my conversation with Mr. John W. Cutler, then Acting General Counsel of the Office of Alien Property, when Mr. George B. Vest, General Counsel of the Board of Governors of the Federal Reserve System, and I called on him on April 15, 1947, I mentioned that it was my intention to recommend that the Federal Reserve Bank of New York pay to the Office of Alien Property a part of the balance to the credit of the Reichsbank account on the books of the Federal Reserve Bank of New York retaining and holding a sufficient amount to cover the judgments obtained against the Reichsbank in the two actions in which attachments were levied against that account by the service on the Federal Reserve Bank of New York of certified copies of warrants of attachment. I am now writing this letter in accordance with that conversation.

In this connection, reference is made to the letter dated October 14, 1946, from James E. Markham, Alien Property Custodian (office of Alien Property Custodian, ref. JEM:WJR:AFW:rf RF-28-1282-C-3 V.O. No. 7794) ad-

addressed to the Federal Reserve Bank of New York, the enclosures with such letter (consisting of a certified copy of Vesting Order Number 7794, dated October 3, 1946, entitled "Re: Obligations Owned by Deutsche Reichs-[fol. 26] bank, also known as Reichsbank and as Reichsbank Direktorium," and a "Turn-Over Directive" addressed to Federal Reserve Bank of New York) and our reply dated October 18, 1946.

In our reply we referred, as we had done in previous discussions and correspondence, to the attachments which had been levied against the account of the Reichsbank on our books, by service on this bank in December 1941 and January 1942 of certified copies of warrants of attachment in two actions in the Supreme Court of the State of New York; and we stated that we believed a court decree or order should be obtained vacating the attachments or otherwise making a judicial determination which would be binding on the attaching creditors and the sheriff to the effect that the Federal Reserve Bank of New York is obligated to pay over to the Alien Property Custodian the amount of the balances in the Reichsbank account notwithstanding the attachments.

Thereafter we from time to time discussed and corresponded with Mr. Cutler and others in his office as to the procedure to be followed by the Office of Alien Property with respect to the vesting order and turn-over directive; and about April 4 Mr. Schlesinger telephoned to me and said that the present intention of the Office of Alien Property was either to apply in the state court for vacation of the attachments, or to bring some other proceeding in which the attaching creditors would be joined as well as the Federal Reserve Bank of New York.

The balances in the Reichsbank account on December 11, 1941, and January 21, 1942, when the certified copies of warrants of attachments were served on us in the *Zittman* and *McCarthy* cases, respectively, and the amounts collected after those dates on items previously received for account of the Reichsbank, were as follows:

[fol. 27]

Reichsbank Account December 11, 1941
Account designated
"Reichsbank"

Balance.....\$219,517.47
Collected after 12/11/41 on items previously received.....58.13

Total.....\$219,575.60

Account designated
"Reichsbank Special Account"

Balance.....\$563,680.32
Collected after 12/11/41 on items previously received.....78,536.28

Total.....\$642,216.60

Account designated
"Reichsbank-Direktorium,
Standstill Account 1938 No. 2"

Balance.....\$ 672.55

Account designated
"Reichsbank-Direktorium,
Standstill Account 1938 No. 3"

Balance.....\$ 4.86

Total.....\$862,469.61

[fol. 28]

Reichsbank Account January 21, 1942
Account designated
"Reichsbank"

Balance.....\$218,321.60
Collected after 1/21/42 on items previously received.....66,737.37

Total.....\$285,061.97

Account designated
"Reichsbank Special Account"

Balance.....\$667,898.69

Account designated
"Reichsbank-Direktorium,
Standstill Account 1938 No. 2"

Balance.....\$ 672.55

Account designated
"Reichsbank-Direktorium,
Standstill Account 1938 No. 3"

Balance.....\$ 4.86

Total.....\$953,638.07

The amounts of the judgments against the Reichsbank in the actions in which attachments have been levied on the account are as follows:

In the action by Leo Zittman, plaintiff, against the Reichsbank and Deutsche Golddiscountbank, defendants, judgments, judgment was entered in the Supreme Court of the State of New York, County of Kings, on March 27, 1942, for \$94,609.37.

[fol. 29] In the action by John F. McCarthy, plaintiff, against the Reichsbank, defendant, judgment was entered in the Supreme Court of the State of New York, County of Kings, on April 24, 1942, for \$29,660.21.

The balances in the Reichsbank account on our books as of the close of business June 10, 1947, were as follows:

Account designated	
"Reichsbank"	\$ 334,801.22
Account designated	
"Reichsbank Special Account"	\$ 667,904.15
Account designated	
"Reichsbank-Direktorium, Standstill Account 1938 No. 2"	\$ 672.55
Account designated	
"Reichsbank-Direktorium, Standstill Account 1938 No. 3"	\$ 4.86
Total	\$1,003,382.78

We enclose herewith checks of this bank dated June 11, 1947, in the form requested in the letter dated October 14, 1946, from the Alien Property Custodian as construed in accordance with paragraph (b) of section 500.41 of part 500 of title 8 of the Code of Federal Regulations (i. e., payable to "Attorney General of the United States, Washington, D. C., Account No. 28-18101") as follows:

Check No. F.D. 36444 in the amount of \$49,744.71, representing net credits to the Reichsbank account on the books of this bank since January 21, 1942, exclusive of amounts collected after that date on items previously received (i. e., the difference between \$1,003,382.78, the total of the balances to the

credit of that account as of the close of business June [fol. 30] 10, 1947, and \$953,638.07; the total of the balances on January 21, 1942, and the amounts collected after that date on items previously received). Check No. F.D. 36446 in the amount of \$653,638.07.

The enclosed checks, described above, represent payments pursuant to Vesting Order Number 7794 and the "Turn-over Directive" issued thereunder, a certified copy of which vesting order and the original of which turn-over directive were transmitted to the Federal Reserve Bank of New York with the letter dated October 14, 1946, from the Alien Property Custodian.

The enclosed checks have been charged today to the Reichsbank account on the books of this bank, making the total of the balances in that account, as of the close of business today, June 11, 1947, \$300,000.00. We enclose a statement of the account as of this date.

The disposition of the \$300,000 will presumably be determined in the proceeding or proceedings, to be brought by the Office of Alien Property, to which this bank, the attaching creditors and the sheriff will be parties.

Your acknowledgment of the receipt of this letter and the enclosed checks will be appreciated.

Very truly yours, /s/ Walter S. Logan, Vice President and General Counsel.

Enclosures.

[fol. 31] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

RESPONSE TO ORDER TO SHOW CAUSE BY FEDERAL RESERVE
BANK

The respondent, Federal Reserve Bank of New York, for its response to the order to show cause made herein by Honorable John Bright, United States District Judge, dated January 23, 1948, directing this respondent and the respondents John J. McCloskey, Jr., as Sheriff of the City of New York, Leo Zittman and John F. McCarthy, respectively, to show cause why a decree should not be entered herein declaring that by virtue of Vesting Order

No. 7794, the Turnover Directive issued pursuant thereto, and the letter of October 14, 1946, of the then Alien Property Custodian, petitioner is entitled to possession of the entire balance remaining in the Deutsche Reichsbank accounts on the books of the respondent Federal Reserve Bank of New York, together with all accrued dividends and accumulations, and for such other and further relief as the Court may deem just, by its attorney, Walter S. Logan, respectfully shows as follows:

Respondent Federal Reserve Bank of New York answers the petition herein, verified January 23, 1948, by Laurence H. Axman, as follows:

(1) Admits each and every allegation of fact set forth in paragraphs numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 of the said petition herein.

(2) Denies each and every allegation contained in paragraph numbered 14 of the said petition herein; but admits and alleges that on or about October 18, 1946, it sent two letters dated that date addressed to the Alien [fol. 32] Property Custodian (copies of which letters marked Exhibits A and B, respectively, are hereto attached) that with the said letter of which Exhibit B is a copy it sent the checks described in Exhibit A attached to Vesting Order No. 7794 (which checks are referred to in said exhibit as "checks or other credit instruments"), and that on or about June 11, 1947, it sent and delivered to Mr. David L. Bazelon, Assistant Attorney General, Director of the Office of Alien Property, Department of Justice of the United States, a letter dated that date (a copy of which marked Exhibit F is attached to the said petition herein) together with the two checks therein described for \$49,744.71 and \$653,637.07, respectively, and a statement (copy of which marked Exhibit C is hereto attached) of the Reichsbank (also known as Deutsche Reichsbank) account on the books of respondent Federal Reserve Bank of New York as of the close of business on June 11, 1947, that as shown in said statement (Exhibit C) the total of the balances in said account at the close of business on June 11, 1947, was \$300,000, that no part of any of said balances has been paid to petitioner, and that the total of the balances in said account has been at all times since June 11, 1947, and is now, \$300,000.

Respondent Federal Reserve Bank of New York further shows:

(3) That the state of its account with the Reichsbank at the dates of the several levies on warrants of attachment referred to in the said petition herein, and at the close of business on June 10 and June 11, 1947, respectively, was as shown in its said letter dated June 11, 1947, to Mr. David L. Bazelon (Exhibit F attached to the said petition herein); that the state of its said account on October 3, 1946, and October 14, 1946, was the same as on June 10, 1947; and that no dividends, accumulations, [fol. 33] increment, or interest, have accrued, been paid or received, or become due or owing, in or to said account, since October 3, 1946, or at any other time, by virtue of any contract with the Reichsbank or otherwise.

(4) That on December 11, 1941, in the action in the Supreme Court of the State of New York entitled "*Leo Zittman, plaintiff, v. Reichsbank and Deutsche Golddiskontbank, defendant*" (Action No. 16183-1941) referred to in the said petition herein, Honorable Charles J. Dodd, a Justice of the Supreme Court of the State of New York, on the application of said Zittman, the plaintiff in said action, duly and regularly issued a warrant of attachment pursuant to Article 54 of the Civil Practice Act of the State of New York, commanding that the several sheriffs of the counties of New York State should attach and safely keep so much of the property of the Reichsbank within the county of each sheriff, respectively, as would satisfy said Zittman's demand in said action for \$68,940, with accrued interest thereon and costs and expenses; that on December 11, 1941, Daniel E. Finn, Jr., Sheriff of the County of New York, by Deputy Sheriff Michael Cuozzo, duly and regularly executed the said warrant of attachment and levied upon the account of the Reichsbank with respondent Federal Reserve Bank of New York in the manner prescribed by Article 55 of the said Civil Practice Act, by serving upon respondent Federal Reserve Bank of New York a certified copy of said warrant of attachment (a copy of which warrant of attachment, with a copy of the certificate of said Sheriff thereto annexed, is attached hereto marked Exhibit D); that respondent Federal Reserve Bank of New York has not at any time

made any payment, or transferred, paid or delivered any property, to the said Sheriff, or to any successor of said Sheriff, or to any other party, pursuant to said warrant [fol. 34] of attachment; that from time to time and on or about March 5, 1942, June 8, 1942, September 5, 1942, December 7, 1942, March 9, 1943, February 9, 1944, January 13, 1945, January 28, 1946, February 5, 1947, and January 27, 1948, by orders of the Supreme Court of the State of New York, County of Kings, duly made and entered and served as prescribed by section 922 of said Civil Practice Act, the time within which the Sheriff of the City of New York might commence an action or special proceeding prescribed in said section 922, to collect, receive and enforce the debts, effects and things in action attached by him, was extended, and that, by said order made and entered January 27, 1948, and duly served January 29, 1948, such time has been so extended to the 11th day of March, 1949; and that said warrant of attachment has never been vacated or modified nor has the attachment thereunder been released, discharged or otherwise removed.

(5) That on January 21, 1942, in the action in the Supreme Court of the State of New York entitled "*John F. McCarthy, plaintiff, v. Reichsbank, defendant*" (Action No. 719-1942), referred to in the said petition herein, Honorable Meier Steinbrink, a Justice of the Supreme Court of the State of New York, on the application of said McCarthy, the plaintiff in said action, duly and regularly issued a warrant of attachment pursuant to Article 54 of the Civil Practice Act of the State of New York, commanding that the several sheriffs of the counties of New York State should attach and safely keep so much of the property of the Reichsbank within the county of each sheriff, respectively, as would satisfy said McCarthy's demand in said action for \$24,810, with interest thereon from May 30, 1939, and costs and expenses; that on January 21, 1942, John J. McCloskey, Jr., Sheriff [fol. 35] of the City of New York, by Deputy Sheriff Francis Bauman, duly and regularly executed the said warrant of attachment and levied upon the account of the Reichsbank with respondent Federal Reserve Bank of New York in the manner prescribed by Article 55 of the said Civil Practice Act, by serving upon respondent Fed-

eral Reserve Bank of New York a certified copy of said warrant of attachment (a copy of which warrant of attachment, with a copy of the certificate of said Sheriff thereto annexed, is attached hereto marked Exhibit E); that respondent Federal Reserve Bank of New York has not at any time made any payment, or transferred, paid or delivered any property, to the said Sheriff, or to any successor of said Sheriff, or to any other party, pursuant to said warrant of attachment; that from time to time and on or about April 17, 1942, July 16, 1942, October 16, 1942, January 18, 1943, April 16, 1943, April 12, 1944, April 11, 1945, April 15, 1946, and April 15, 1947, by orders of the Supreme Court of the State of New York, County of Kings, duly made and entered and served as prescribed by section 922 of said Civil Practice Act, the time within which the Sheriff of the City of New York might commence an action or special proceeding prescribed in said section 922, to collect, receive and enforce the debts, effects and things in action attached by him, was extended, and that such time, by said order made and entered April 15, 1947, and duly served April 15, 1947, has been so extended to the 22nd day of April, 1948; and that said warrant of attachment has never been vacated or modified nor has the attachment thereunder been released, discharged or otherwise removed:

(6) That section 917.2 of said Civil Practice Act, as at all times herein mentioned and now in full force and effect, [fol. 36] provides that a levy under a warrant of attachment upon property other than real estate, where such property consists of a demand (other than a demand as hereinafter specified, the exceptions not being pertinent to this proceeding) shall be made by leaving a certified copy of the warrant with the person against whom the demand exists, and provides further as follows:

"Any such person so served with a certified copy of a warrant of attachment is forbidden to make or suffer, any transfer or other disposition of, or interfere with, any such property or interest therein so levied upon, or pay over or otherwise dispose of any debt so levied upon, or sell, assign or transfer any right so levied upon, to any person, or persons, other than the sheriff serving the said warrant until

ninety days from the date of such service, except upon direction of the sheriff or pursuant to an order of the court. Any such payment, sale, assignment or transfer shall nevertheless be valid as to the payee or transferee in good faith thereof, and without notice that the warrant has been served."

(7) That section 922.1 of said Civil Practice Act, as at all times herein mentioned and now in full force and effect, provides as follows:

"In the event that the person owing any debt to the defendant, or holding property, effects or things in action of the defendant or interest therein subject to attachment, on which a levy under a warrant has been made, as in this act provided, shall fail or refuse to deliver such personal property attached, or to pay or assign to the sheriff the said debt, effect or thing in action, or interest therein, the sheriff may, and if [fol. 37] indemnified by the plaintiff as hereinafter provided, must within ninety days after the service of the certified copy of the warrant on such person, commence an action or special proceeding to reduce to his actual custody all such personal property capable of manual delivery, and to collect, receive and enforce all debts, effects and things in action attached by him, and may maintain any such action or special proceeding in his name or in the name of the defendant for that purpose. He may discontinue such an action or special proceeding at such time and on such terms as the court or judge directs. The sheriff shall not be obliged to commence any such action or special proceeding to reduce such personal property capable of manual delivery to his actual custody or to collect, receive or enforce debts, effects or things in action of the defendant unless the plaintiff or his attorney requests in writing that such action or special proceeding be commenced, and indemnifies the sheriff for all necessary expenditures incurred or to be incurred by him in connection therewith in manner satisfactory to him or fixed by the court.

"The service of process commencing such action

or special proceeding against any person upon whom a certified copy of a warrant of attachment shall have been served, shall continue as against that person during the pendency of said action or special proceeding all duties and liabilities imposed upon him in the first instance by the service of the said warrant of attachment upon him.

"The time within which such action or special proceeding, as hereinbefore provided, may be commenced [fol. 38] shall be extended beyond the period of ninety days from the date of the service of the said warrant only by order of the court for good cause shown. Such an order may be granted upon *ex parte* application of plaintiff. An order thus extending the time within which such an action or special proceeding may be commenced shall be effective to continue all duties and liabilities of any person on whom a warrant of attachment in the action has been served, provided that a certified copy of the said order is served upon said person prior to the expiration of the said ninety days, or prior to the expiration of the time for commencing such an action or special proceeding as further extended. If notice of the application is served upon such person five days before the return date thereof and prior to the expiration of said ninety days, or prior to the expiration of the time as further extended, such notice shall extend all said duties and liabilities until ten days after an order determining the motion shall have been entered."

(8) That the Supreme Court of the State of New York is a court of record by virtue of section 2 of the Judiciary Law of the State of New York.

(9) That section 750.A.3. of said Judiciary Law provides that a court of record has power to punish for a criminal contempt a person guilty of wilful disobedience to its lawful mandate; that section 753.A.3. and 753.A.8. of said Judiciary Law provide that a court of record has power to punish a neglect or violation of duty by which a right or remedy of a party to a civil action or special proceeding, pending in the court, may be defeated,

[fol. 39] impaired, impeded or prejudiced in certain specified cases including the following:

"3. A party to the action or special proceeding, an attorney, counsellor, or other person, for the non-payment of a sum of money, ordered or adjudged by the court to be paid, in a case where by law execution cannot be awarded for the collection of such sum; or for any other disobedience to a lawful mandate of the court," and

"8. In any other case, where an attachment or any other proceeding to punish for a contempt, has been usually adopted and practiced in a court of record, to enforce a civil remedy of a party to an action or special proceeding in that court, or to protect the right of a party."

(10) That section 773 of said Judiciary Law provides as follows:

"If an actual loss or injury has been produced to a party to an action or special proceeding, by reason of the misconduct proved against the offender, and the case is not one where it is specially prescribed by law, that an action may be maintained to recover damages for the loss or injury, a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court. The payment and acceptance of such a fine constitute a bar to an action by the aggrieved party, to recover damages for the loss or injury. Where it is not shown that such an actual loss or injury has been produced, a fine must be imposed, not exceeding the amount of [fol. 40] the complainant's costs and expenses, and two hundred and fifty dollars in addition thereto, and must be collected and paid, in like manner. A corporation may be fined as prescribed in this section."

Wherefore the respondent Federal Reserve Bank of New York prays that any decree herein declaring that petitioner is entitled to possession of the entire balance or balances remaining in the Reichsbank account on the books of respondent Federal Reserve Bank of New York,

shall direct that respondent Federal Reserve Bank of New York shall not be required to pay the amount of said balance or balances to petitioner unless and until the warrants of attachment hereinabove described and the attachments thereunder shall have been vacated, discharged or released and that such decree shall find that there are no accrued dividends or accumulations, and for such other and further relief as the Court may deem just.

(Signed) Walter S. Logan; Attorney for Respondent Federal Reserve Bank of New York.

(Verified by L. Werner Knoke, Feb. 4, 1948.)

[fol. 41] EXHIBIT A, ANNEXED TO RESPONSE

FEDERAL RESERVE BANK OF NEW YORK

October 18, 1946.

Mr. James E. Markham, Alien Property Custodian, Washington 25, D. C.

Your Reference: JEM:WJR:AFW:rf, F-28-1282-C-3 V.O. No. 7794.

Dear Sir:

The receipt is acknowledged of your letter of October 14, 1946, and its enclosures. As requested in your letter, we are returning herewith the carbon copy of your letter which was attached to the original, having signed the following acknowledgment on the copy:

"Receipt is hereby acknowledged of the original of this letter and of a certified copy of Vesting Order No. 7794 this 15th day of October 1946.

Federal Reserve Bank of New York, By Walter S. Logan, Vice President and General Counsel."

We are forwarding to you, under separate cover, the checks described in Exhibit A attached to the vesting order. These checks were received by this bank subsequent to the levy of the attachments on the account of the Reichs-

bank, so that under the New York law these checks are not subject to the attachments.

As explained in our previous discussions and correspondence with your office attachments were levied against the account of the Reichsbank on our books, by service on this bank of certified copies of warrants of attachment in actions in the Supreme Court of the State of New York in December, 1941, and January, 1942; and in view of these attachments we believe that for our protection and [fol. 42] to avoid any appearance of acting in disregard or in violation of the orders of the New York court, an appropriate court decree or order should be obtained vacating the attachments, or otherwise making a judicial determination which will be binding on the attaching creditors and the Sheriff to the effect that the Federal Reserve Bank of New York is obligated to pay over to the Alien Property Custodian the amount of the balances in the Reichsbank account notwithstanding the attachments.

In this connection and for your convenience, we quote the following from our letter dated September 20, 1946, to Mr. Henry G. Hilken, Chief, Division of Investigation, Office of Alien Property Custodian, Washington, D. C., in response to his letter dated September 13, 1946, and confirming telephone conversations with him and with Mr. Worthington:

"As stated in our letter of September 14, 1945, addressed to the Office of Alien Property Custodian, 120 Broadway, New York, N. Y., for the attention of Mr. Ralph W. Orr, Acting Chief, Division of Investigation, in reply to Mr. Orr's letter of August 27, 1945, the Federal Reserve Bank of New York was served in December 1941 and January 1942, with certified copies of warrants of attachment in two actions in New York Supreme Court against the Reichsbank. From time to time since then we have been served with orders extending the time within which the Sheriff of the City of New York must commence an action or special proceeding to reduce to his actual custody the personal property of the defendants capable of manual delivery, and to collect, receive and enforce all debts, effects and things in action of the defendant attached by the Sheriff in these two actions. Under

these orders the time has been extended to March 11, 1947, in one case and to April 22, 1947, in the [fol. 43] other case. The papers served on us in connection with such orders indicate that a judgment was entered in favor of the plaintiff against the Reichsbank in each case in 1942.

"As we have indicated in all of our discussions with your office regarding the vesting of Reichsbank accounts, in view of these attachments we believe that for our protection, and to avoid any appearance of acting in disregard or violation of the orders of the New York Court which issued the attachments, an appropriate court decree or order should be obtained authorizing or directing the Federal Reserve Bank of New York to turn over to the Alien Property Custodian property held by the Federal Reserve Bank of New York for the account of the Reichsbank.

"We have given some preliminary study to the question of what would be the appropriate procedure for obtaining such court decree or order, and tentatively it appears to us that the following procedures are available:

- (1) The Alien Property Custodian could make application in the attachment actions, under Sections 948 and 949 of the New York Civil Practice Act, for the vacation or modification of the attachments, as was done in the case of *Telkes v. Hungarian National Museum*; (New York Law Journal, May 24, 1943, page 2026.)
- (2) The Alien Property Custodian or the Federal Reserve Bank of New York could bring an action for a declaratory judgment, joining all interested parties as defendants.

[fol. 44] "There may be other appropriate methods of obtaining a court decree or order in a proceeding in which all interested parties would be joined, but the two proceedings just described appear to be the ones most obviously available. We shall be glad to discuss this question further with you and Mr. Worthington at any time, as to what type of proceeding may be preferable, or any other question in relation to the Reichsbank accounts."

As indicated in the foregoing we look forward to an opportunity to discuss this matter with you further. We would like to suggest also that it would be desirable to have other interested parties participate in such discussion. If a meeting is held in New York for discussion of this matter we shall of course be pleased to make a meeting place available in this bank.

Very truly yours, Walter S. Logan, Vice President
and General Counsel.

Enclosure.

[fol. 45] EXHIBIT B, ANNEXED TO RESPONSE

Federal Reserve Bank of New York

October 18, 1946.

Registered Mail

Alien Property Custodian, Washington 25, D. C.
Attention: Property Division

Your Reference: JEM:WJR:AFW: rf F-28-1282-C-3
V.O.No. 7794.

DEAR SIR:

In accordance with our letter to you dated today, signed by Mr. Walter S. Logan, Vice President and General Counsel, acknowledging the receipt of your letter of October 14, 1946, and its enclosures, we are forwarding to you herewith the checks described in Exhibit A attached to Vesting Order No. 7794.

Very truly yours, Peter P. Lang Manager, Foreign
Department.

Enclosures.

[fol. 46]

EXHIBIT C, ANNEXED TO RESPONSE.

	Key	Foreign Department
ALS Allotment of U. S. Securities	P/G	Purchase of Gold
A/P Acceptances Purchased	PMC	Proceeds of Maturing Coupons
ARP Acceptances Rec'd Against Payment	P/R	Payment(s) Received
C/C Cost of Cable(s)	PRG	Payment Received on Gold
D/P Draft(s) Paid	P/S	Proceeds of Securities
FXP Foreign Exchange Purchased	SDP	Securities Delivered Against Payment
FXS Foreign Exchange Sold	S/P	Securities Purchased
LCG Labor Costs on Gold	SRP	Securities Received Against Payment
OPE Out of Pocket Expenses	S/S	Securities Sold
P/A Proceeds of Maturing Acceptances	TRA	Transfer
P/C Proceeds of Collections	USC	Proceeds of U. S. Coin/Currency

Statement of
ReichsbankPeriod
June 1947

IN ACCOUNT WITH FEDERAL RESERVE BANK OF NEW YORK

Please Examine Statement of Account at Once Reporting
Any Discrepancies to the General Auditor Immediately.

Date	Description	Debits	Date	Description	Credits	Balance
				Balance Close 6/10/47		
				In Accounts Designated		
				Reichsbank	334,801.22	
				Reichsbank Special		
				Account	667,904.15	
				Reichsbank-Direktorium		
				Standstill Account 1938		
				No. 2	672.55	
				Reichsbank-Direktorium		
				Standstill Account 1938		
				No. 3	4.86	
				Total of Above Accounts		1,003,382.78
6/11	Attorney General of the United States, Washington, D. C., Account No. 28-18101	49,744.71				
6/11	Ditto	653,638.07				
				Balance Close 6/11/47		300,000.00

[fol. 47] EXHIBIT D, ANNEXED TO RESPONSE

The People of the State of New York to the Sheriff of
Any County of New York State:

Whereas an application has been made to the undersigned by the plaintiff, Leo Zittman, for a warrant of attachment against the property of the defendant, Reichsbank, and the defendant, Deutsche Golddiskontbank, and a summons having been duly issued in this action, and the plaintiff having satisfactorily shown by the affidavits of Leo Zittman, duly verified the 11th day of December, 1941, and of Rudolphe G. Maron, duly verified the 10th day of December, 1941, that the action is brought to recover for a sum of money only, as damages, for unjust enrichment, that a cause of action therefor exists against the defendant, Reichsbank, and in favor of the plaintiff for the sum of \$68,940, with accrued interest thereon, that a cause of action therefor exists against the defendant, Deutsche Golddiskontbank, and in favor of the plaintiff for the sum of \$40,230, with accrued interest thereon, and that the plaintiff is entitled to recover said sums over and above all counterclaims known to him, and it being further satisfactorily shown by said affidavits that said plaintiff is entitled to a warrant of attachment against the property of the defendants and each of them on the ground that the defendants are not residents of the State of New York, and the plaintiff having also given the undertaking required by law,

You are hereby commanded to attach and safely keep so much of the property within your County which the said defendant, Reichsbank, has or which it may have at any time before final judgment in this action as will satisfy the said plaintiff's demand of \$68,940, with accrued interest thereon and costs and expenses, and which the defendant, Deutsche Golddiskontbank, has or which it may have at any time before final judgment in this action [fo. 48] as will satisfy the said plaintiff's demand of \$40,230, with accrued interest thereon and costs and expenses, and that you proceed herein in the manner and make your return within the time required by law.

Witness, Hon. Charles J. Dodd, Justice of the Supreme Court of the State of New York, at the Court House, in

the Borough of Brooklyn, City of New York, on the 11th day of December, 1941.

Hon. Charles J. Dodd, Justice of the Supreme Court of the State of New York.

Katz & Sommerich, Attorneys for Plaintiff, Office & P. O. Address, 120 Broadway, Borough of Manhattan, City of New York.

(Clerk's Certificate omitted in printing.)

[fol. 49] EXHIBIT E, ANNEXED TO RESPONSE

The People of the State of New York to the Sheriff of the City of New York:

Whereas an application has been made to the undersigned by the plaintiff, John F. McCarthy, for a warrant of attachment against the property of the defendant, Reichsbank, and a summons having been duly issued in this action, and the plaintiff having satisfactorily shown by the affidavits of John F. McCarthy, duly verified the 20th day of January, 1942 and of Thomas H. Creighton, Jr., duly verified the 20th day of January, 1942, that the action is brought to recover a sum of money only for work, labor and services performed, and that a cause of action therefor exists against said defendant and in favor of the plaintiff for the sum of \$24,810, with interest thereon from May 30, 1939, and that the plaintiff is entitled to recover said sum over and above all counterclaims known to him, and it being further satisfactorily shown by said affidavits and the complaint that said plaintiff is entitled to a warrant of attachment against the property of the defendant, on the ground that the defendant is a foreign corporation and not a resident of the State of New York, and the plaintiff having also given the undertaking required by law,

Now, you are hereby commanded to attach and safely keep so much of the property within your County which the said defendant Reichsbank has or which it may have at any time before final judgment in this action as will satisfy the said plaintiff's demand of \$24,810, with accrued

interest thereon from May 30, 1939, and costs and expenses, and that you proceed herein in the manner and make your return within the time required by law.

[fol. 50] Witness, Hon. Meier Steinbrink, a Justice of the Supreme Court of the State of New York, at the Court House, in the Borough of Brooklyn, City of New York, the 21st day of January, 1942.

/s/ M. Steinbrink, Justice of the Supreme Court of the State of New York.

Katz & Sommerich, Attorneys for Plaintiff, Office & P. O. Address, 120 Broadway, Borough of Manhattan, City of New York.

(Clerk's Certificate omitted in printing.)

[fol. 51] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

ANSWER OF RESPONDENT JOHN F. MCCARTHY

The respondent, John F. McCarthy, answering the petition herein:

1. Admits the allegations contained in paragraphs thereof numbered 1-3 inclusive, 5 and 11-15 inclusive.

2. Alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 thereof.

3. Admits the allegations contained in paragraph 6 thereof that (a) for some time prior to December 7, 1941 the Deutsche Reichsbank, the Central Bank of Germany, a non-resident of the State of New York, maintained four deposit accounts with respondent Federal Reserve Bank of New York; (b) with the application of the "freezing" controls of Executive Order No. 8389 to nationals of Germany by Executive Order No. 8785, effective June 14, 1941, these accounts became "blocked" and transactions relating thereto were forbidden except as authorized by the Secretary of the Treasury; and (c) the balances in the Reichsbank accounts totalled \$862,469.61 on December 11, 1941 and \$953,683.07 on January 21, 1942, and, except

as specifically admitted herein, denies each and every other allegation contained in said paragraph.

4. Admits the allegations contained in paragraph 7 thereof that (a) on or about December 11, 1941, respondent Leo Zittman commenced an action in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank (Action No. 16183-1941); (b) pursuant to a warrant of attachment procured by the respondent Zitt-[fol. 32] man, the Sheriff of the County of New York, then Daniel E. Finn, Jr., on or about December 11, 1941 levied upon said accounts of Deutsche Reichsbank by serving a certified copy of a warrant of attachment upon the respondent Federal Reserve Bank of New York, and (c) thereafter on March 27, 1942 and following the service by publication and mailing of the summons in said action, judgment by default for \$94,609.37 in favor of respondent Zittman was entered against the Reichsbank, and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

5. Admits the allegations contained in paragraph 8 thereof that a license was never obtained authorizing respondent Federal Reserve Bank to pay the said judgment out of said "blocked" accounts, and that to date no execution has been had on the judgment, and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

6. Admits the allegations contained in Paragraph 9 thereof that (a) on or about January 20, 1942, respondent John F. McCarthy commenced an action in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank (Action 719-1942); (b) pursuant to a warrant of attachment procured by respondent McCarthy, the Sheriff of the City of New York, respondent John J. McCloskey, Jr., on or about January 21, 1942 levied upon said accounts of Deutsche Reichsbank by serving a certified copy of the warrant of attachment upon the respondent Federal Reserve Bank of New York, and (c) publication and mailing of the summons in said action, thereafter, on April 24, 1942 and following the service by judgment by default for \$29,660.21 in favor of the respondent McCarthy was entered and, except as expressly

admitted herein, denies each and every other allegation contained in said paragraph.

[fol. 53] 7. Admits the allegations contained in paragraph 10 thereof that (a) on May 29, 1942, the Foreign Funds Control of the United States Treasury Department denied Application No. NY-401383 of respondent McCarthy dated April 25, 1942 for a license authorizing respondent Federal Reserve Bank of New York to pay the said judgment out of the "blocked" accounts, and (b) that a license was never obtained to authorize respondent Federal Reserve Bank to pay the said judgment out of the "blocked" accounts and to date no execution has been had on the judgment and, except as expressly admitted herein, denies each and every other allegation contained in said paragraph.

First Defense

8. In the action commenced by the respondent McCarthy, a resident citizen of the United States, as plaintiff, against Reichsbank, as defendant, in the New York Supreme Court, Kings County, by the filing of the summons and complaint therein in the office of the Clerk of Kings County, New York, on January 21, 1942, McCarthy, as assignee, sought to recover the sum of \$24,810.00 with interest thereon from May 30, 1939 for legal work, labor and services rendered the said Reichsbank at its special instance and request by Frank W. Mondell, who was a member of the 54th (1895-97) and 56th to 67th Congresses (1899-1923), majority floor leader in the 66th and 67th Congresses and Director of the War Finance Corporation (1923-25) and who died on or about August 6, 1939, a resident of the District of Columbia, leaving a Last Will and Testament which was duly probated by the United States District Court for the District of Columbia and upon which Letters of Administration with the Will annexed were duly issued and granted by the said United States District Court to William H. Mondell appointing him Administrator with the Will annexed [fol. 54] of the goods, chattels and credits which were of said Frank W. Mondell, and said William H. Mondell, who thereupon duly qualified and acted as such Administrator with the Will annexed, duly assigned said claim against the Reichsbank to the respondent McCarthy.

9. In said action a warrant of attachment was duly

issued on January 21, 1942 to the Sheriff of the City of New York who, pursuant to the direction contained in said warrant, levied upon the accounts of the Reichsbank with the Federal Reserve Bank of New York, among others, by serving a certified copy of said warrant of attachment upon said Federal Reserve Bank, and upon February 17, 1942, the New York Supreme Court, Kings County, made an order directing service of the summons in said action upon Reichsbank by publication, which order further provided that the mailing of a copy of the summons and complaint and said order for service of summons by publication and the notice required by Rule 52 of the New York Rules of Civil Practice to said Reichsbank as required by Rule 50 of said Rules be dispensed with and that a copy of each thereof be mailed to the Attorney General of the United States on behalf of said Reichsbank.

10. On February 17, 1942 the United States was at war with Germany, and said Reichsbank was a foreign corporation having its office in, and it was a national of, Germany, and Rule 50 of the New York Rules of Civil Practice then provided that in such case the order of the Court for service of the summons by publication may dispense with the mailing of any papers to the defendant and, in lieu thereof, shall direct that the papers be mailed to such officer as may have been appointed by the President of the United States to take possession of the property of alien enemies directed to him at Washington, District of Columbia, on behalf of such defendant.

[fol. 55] 11. The officer contemplated by said Rule 50 as it existed prior to its amendment on March 16, 1942 was the officer whom the President was authorized to appoint pursuant to Section 6 of the Trading with the Enemy Act of October 6, 1917 (40 Stat. 415; U. S. Code, Title 50 Appendix, Section 6) and by said statute the President was authorized to appoint an official to be known as the Alien Property Custodian with power to receive all money and property in the United States due or belonging to any enemy or ally of an enemy which may be paid, conveyed, transferred, assigned or delivered to said Custodian under the provisions of said act.

12. By an Executive Order No. 6694 made and issued by the President on May 1, 1934, which became effective

on July 1, 1934, the office of the Alien Property Custodian was abolished and ceased to exist and all the authority, rights, privileges, powers and duties conferred and imposed on said official by law were transferred to the Department of Justice to be administered under the supervision of the Attorney General and said Executive Order was in full force and effect on February 17, 1942 when the order for publication of the summons in said action of the respondent McCarthy against Reichsbank was issued.

13. Publication of the summons in said action was made in accordance with the terms of said order for service by publication, dated February 17, 1942 and copies of the summons and complaint in said action, the order for service of the summons by publication and notice required by Rule 52 of the New York Rules of Civil Practice were mailed on February 18, 1942 addressed to the Attorney General of the United States, at Washington, D. C. and under date of February 25, 1942, the Attorney General of the United States acknowledged receipt thereof.

[fol. 56] 14. The Attorney General of the United States made no appearance and took no steps in said action and permitted judgment to be taken and entered therein in favor of respondent McCarthy against Reichsbank on April 24, 1942 for \$29,680.21, and by reason thereof the then Attorney General of the United States acquiesced in the taking and entry of said judgment and consented thereto.

Second Defense

15. Repeats and reiterates each and every allegation contained in paragraphs hereof numbered 8-14 inclusive with the same force and effect as if fully set forth at length herein.

16. The acquiescence in the taking and entry of said judgment and consent thereto of the then Attorney General of the United States is binding upon the petitioner herein, and by reason thereof petitioner is estopped from questioning the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

Third Defense

17. From the inception of the "freezing" control, and on January 21, 1942 when the warrant of attachment was issued in the aforesaid action of McCarthy against Reichsbank and the levy made thereunder upon the accounts of the Reichsbank with the Federal Reserve Bank of New York, the commencement of actions in the courts of the United States or any of the States against blocked nationals and the issuance of warrants of attachment against funds belonging to blocked nationals and levies thereunder were authorized by the United States Treasury Department, which was empowered by Executive Order No. 8389, [fol. 57] as amended, to administer the "freezing" control thereunder, and said Treasury Department merely required that a license be secured before payment to satisfy any judgment could be made from any blocked account affected by said Executive Order, and by reason thereof the commencement of the aforesaid action of McCarthy against Reichsbank, the issuance of the warrant of attachment therein and levy made thereunder on January 21, 1942, were authorized by the United States Treasury Department.

Fourth Defense

18. Repeats and reiterates each and every allegation contained in paragraph 17 hereof with the same force and effect as if fully set forth at length herein.

19. Said authorization of the United States Treasury Department is binding upon the petitioner herein and by reason thereof petitioner is estopped from questioning the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

Fifth Defense

20. General Ruling No. 12 issued on April 21, 1942 by the Secretary of the Treasury in connection with the administration of the "freezing" control under Executive Order No. 8389, as amended, acted as a license validating the issuance of the warrant of attachment in the aforesaid action of McCarthy against Reichsbank, the levy made thereunder upon the accounts of the Reichsbank with the

Federal Reserve Bank of New York on January 21, 1942, the judgment recovered by the respondent McCarthy in said action against the Reichsbank on April 24, 1942, and [fol. 58] the transfer thereby to the respondent McCarthy of the attributes of property interest in said accounts except payment.

Sixth Defense

21. Repeats and reiterates each and every allegation contained in paragraph 20 hereof with the same force and effect as if fully set forth at length herein.

22. Said General Ruling No. 12 is binding upon the petitioner herein and by reason thereof petitioner is estopped from questioning the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

Seventh Defense

23. Under the laws of the State of New York a lien for the security of his demand against the Reichsbank was created in favor of the respondent McCarthy upon the accounts of the Reichsbank with the Federal Reserve Bank of New York on January 21, 1942, when the levy was made under the warrant of attachment issued by the New York Supreme Court, Kings County, and the rights or interest, if any, of the petitioner in said accounts by virtue of and under Vesting Order No. 7794 and the Turnover Directive of October 14, 1946 and the letter of the same date of the then Alien Property Custodian addressed to the respondent Federal Reserve Bank of New York are subject to said attachment and said lien.

Eighth Defense

24. The service of a certified copy of the warrant of attachment issued by the New York Supreme Court, Kings [fol. 59] County, in the action of McCarthy against Reichsbank by the Sheriff of the City of New York on January 21, 1942 on the respondent Federal Reserve Bank of New York made the accounts of the Reichsbank with the Federal Reserve Bank of New York the subject of that litigation and brought said accounts under the jurisdiction and control of the New York Supreme Court, Kings County,

and the United States District Courts have no jurisdiction to interfere with or nullify said jurisdiction and control of said property by the New York Supreme Court, Kings County.

Ninth Defense

25. The action in the New York Supreme Court, Kings County, instituted by the respondent McCarthy against Reichsbank, was a proceeding *in rem* and subjected the accounts of the Reichsbank with the respondent Federal Reserve Bank of New York, which were levied upon and attached by the Sheriff of the City of New York on January 21, 1942, to the payment of the judgment recovered by the respondent McCarthy in said action against the Reichsbank on April 24, 1942 with interest.

Tenth Defense

26. The judgment entered on April 24, 1942 in favor of the respondent McCarthy against the Reichsbank in the action in the New York Supreme Court, Kings County, is a judgment *in rem* and is binding upon all the world, including the petitioner herein, with respect to the accounts of the Reichsbank with the respondent Federal Reserve Bank of New York levied upon on January 21, 1942 by the Sheriff of the City of New York, by the service of a certified copy of the warrant of attachment issued in that action.

[fol. 60]

Eleventh Defense

27. Respondent McCarthy is a citizen of the United States and is entitled under Section 8 of the Trading with the Enemy Act (40 Stat. 418; United States Code, Title 50, Appendix, Section 8) to continue to have his lien for the security of his judgment against the Reichsbank created in his favor upon the accounts of the Reichsbank with the Federal Reserve Bank of New York on January 21, 1942 by the service by the Sheriff of the City of New York of a certified copy of the warrant of attachment issued in the action in the New York Supreme Court, Kings County, and to enforce said lien, realize thereon, and satisfy the judgment recovered by him against the Reichsbank out of the said attached accounts.

Twelfth Defense

28. The service by the Sheriff of the City of New York upon the Federal Reserve Bank of New York on January 21, 1942 of a certified copy of the warrant of attachment issued by the New York Supreme Court, Kings County, in the action in that Court of the respondent McCarthy against Reichsbank enjoined and forbade the Federal Reserve Bank of New York to make or suffer any transfer or other disposition of or interfere with the accounts of the Reichsbank with the Federal Reserve Bank of New York so levied upon to any person or persons, including the petitioner herein, other than the said Sheriff, except upon the direction of the said Sheriff, or pursuant to an order of the New York Supreme Court, and such injunction is still in full force and effect.

[fol. 61]

Thirteenth Defense

29. The Treasury Department has in the administration of the "freezing" control under Executive Order 8389, as amended, recognized attachments as valid and creating liens upon blocked accounts without first procuring a particular license therefor by issuing licenses after recovery of judgment authorizing payment out of the attached accounts in satisfaction of the judgment.

30. That such practice of the Treasury Department is binding upon the petitioner herein and by reason thereof, petitioner is estopped from questioning the validity of the proceedings in said action of McCarthy against Reichsbank in the New York Supreme Court, Kings County, and the judgment entered therein.

Fourteenth Defense

31. Upon information and belief, that since the inception of the "freezing" control the Alien Property Custodian has recognized the validity of an attachment against blocked accounts of an enemy of the United States and the prior right of property therein of the judgment creditor by payment of the judgment out of the enemy judgment-debtor's assets taken over by the Alien Property Custodian under a Vesting Order notwithstanding the judgment creditor had not procured a particular license

authorizing the attachment and entry of judgment since the inception of the "freezing" control, and by reason thereof the petitioner herein is estopped from questioning the validity of the proceedings in said action in McCarthy against Reichsbank in the New York Supreme Court, Kings County, the judgment entered therein and the prior right of property of McCarthy in the attached accounts of the Reichsbank with the Federal Reserve Bank of New York.

[fol. 62] Wherefore, the respondent McCarthy prays that the petition herein be dismissed, together with the costs and disbursements of this action.

Katz & Sommerich, By Henry I. Fillman, A member of the firm, Attorneys for respondent, John F. McCarthy, Office and Post Office Address, 120 Broadway, New York 5, N. Y.

(Verified by John F. McCarthy, Feb. 5, 1948.)

[fol. 63] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

ANSWER OF RESPONDENT LEO ZITTMAN

The respondent, Leo Zittman, for his response to the Order to Show Cause herein, dated January 23, 1948, and for his answer to the petition herein, on information and belief,

1. Admits the allegations of fact contained in the paragraphs of the petition herein, numbered 1 to 5 inclusive, 8, 9 and 11 to 15, inclusive.

2. Alleges that he is without knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the petition herein, numbered 10.

3. Admits the allegations contained in the paragraph of the petition herein, numbered 6, except that this respondent denies that application of the "freezing" Controls of Executive Order No. 8389 as extended by Execu-

tive Order No. 8785, prohibited the transfer of any interest in the accounts therein described, maintained with the respondent, Federal Reserve Bank of New York and denies that transactions relating thereto were forbidden except as specifically authorized by the Secretary of the Treasury.

4. Admits the allegations contained in the paragraph of the petition herein, numbered 7, except that this respondent alleges that the action commenced by him in the Supreme Court of the State of New York, Kings County, against Deutsche Reichsbank and Deutsche Golddiskontbank, defendants (action No. 16183-1941) was begun on December 11, 1947 and on no other day and that a levy [fol. 64] pursuant to the warrant of attachment procured by this respondent in said action, was duly made by the then Sheriff of the County of New York on December 11, 1941 at 2:20 P. M. on the accounts maintained by the Deutsche Reichsbank with the Federal Reserve Bank of New York.

By way of further defense to the petition herein, respondent, Leo Zittman, says:

5. That, in the action begun by this respondent, a resident citizen of the United States, as plaintiff, against Reichsbank and Deutsche Golddiskontbank, as defendants (Cause No. 16183-1941) in the Supreme Court of the State of New York, Kings County, by the filing of the summons therein in the office of the Clerk of Kings County, New York, on December 11, 1941, this respondent sought to recover the sum of \$68,940 with interest thereon from July 2, 1937, from the Reichsbank and the sum of \$40,230 with interest thereon from July 2, 1937 from Deutsche Golddiskontbank for unjust enrichment upon a cause of action therefor which arose on July 2, 1937 and that such action was brought for the benefit of a person within the United States not an enemy or ally of enemy of the United States.

6. That, in said action, a warrant of attachment was duly issued on December 11, 1941 to the Sheriff of the County of New York who, pursuant to the direction contained in said warrant levied upon the funds, credits and property of the Reichsbank maintained with, and held by the respondent, Federal Reserve Bank of New York, among

others, by serving a certified copy of said warrant of attachment upon said Federal Reserve Bank of New York on December 11, 1941 at 2:20 o'clock P. M.; that, at the time of the service of the said warrant of attachment, the said Federal Reserve Bank of New York, as acknowledged by it, held property of, and was indebted to, the [fol. 65] said Reichsbank in the sum of \$862,469.61 and that, on January 21, 1942, the said Federal Reserve Bank of New York was indebted to the Reichsbank in the sum of \$953,683.07; and that all of said funds credits and property in the amount of \$862,469.61 were received and held by the said Federal Reserve Bank of New York prior to the commencement of the War with Germany.

7. That, in said action and on December 31, 1941, the Supreme Court of the State of New York, Kings County, made an order directing service of the summons in said action upon Reichsbank and Golddiskontbank by publication, which order further provided that the mailing of a copy of the summons and complaint and said order for service of summons by publication and the notice required by Rule 52 of the New York Rules of Civil Practice to said Reichsbank and Deutsche Golddiskontbank as required by Rule 50 of said Rules be dispensed with and that a copy of each thereof be mailed to the Attorney General of the United States on behalf of said Reichsbank and said Deutsche Golddiskontbank; and that the said Reichsbank and said Deutsche Golddiskontbank were non-residents of the State of New York and were foreign corporations which had offices and places of business in, and were nationals of, Germany.

8. That publication of the summons in said action was made in accordance with the terms of said order for service by publication, dated December 31, 1941; and copies of the summons and complaint in said action, the order for service of the summons by publication and notice required by Rule 52 of the New York Rules of Civil Practice were duly and regularly mailed, addressed to the Attorney General of the United States, at Washington, D. C., and, that the Attorney General of the United States acknowledged receipt thereof.

[fol. 66] 9. That the Attorney General of the United States made no appearance and took no steps in said action

and, accordingly, judgment was taken and entered in said action on March 27, 1942, in favor of this respondent against the Reichsbank for \$92,655.28 and against the Deutsche Golddiskontbank for \$54,069.12 and against Reichsbank and Deutsche Golddiskontbank, jointly and severally, for \$1,954.09 costs and disbursements as taxed; that the Attorney General acquiesced in the said action and the proceedings and judgments had therein; and that such acquiescence is binding on the petitioner and he is estopped thereby.

10. That, upon the service of the said warrants of attachment in said action upon the Federal Reserve Bank of New York, the latter, by virtue of Section 917 of the New York Civil Practice Act, was "forbidden to make or suffer, any transfer or other disposition of, or interfere with any such property or interest therein so levied upon, or pay over or otherwise dispose of any debt so levied upon, or sell, assign or transfer any right so levied upon, to any person, or persons, other than the Sheriff serving the said warrant until ninety days from the date of such service, except upon direction of the sheriff or pursuant to an order of the court," which injunction is still in full force and effect.

11. That transfer of attached funds or property contrary to Section 917 of the New York Civil Practice Act constitutes under the law of New York a civil contempt of court, punishable by fine and imprisonment, or either.

12. Under Section 922 of the New York Civil Practice Act, the Sheriff may be required to commence, within ninety days of service of the certified copy of the warrant of attachment, an action or special proceeding to reduce to his actual custody the property attached, but such section further provides:

[fol. 67] "The time within which such action or special proceeding, as hereinbefore provided, may be commenced shall be extended beyond the period of ninety days from the date of the service of the said warrant only by order of the court for good cause shown. * * *

An order thus extending the time within which such an action or special proceeding may be commenced shall be effective to continue all duties and liabilities of any person on whom a warrant of attachment in the action

has been served, provided that a certified copy of the said order is served upon said person prior to the expiration of the said ninety days, or prior to the expiration of the time for commencing such an action or special proceeding as further extended."

13. From time to time and in accordance with the provisions of Section 922 of the New York Civil Practice Act, orders have been duly and regularly made in said action by the Supreme Court of the State of New York, Kings County, and have been duly and regularly entered and served, as prescribed by Section 922 of the New York Civil Practice Act, duly extending the time within which the Sheriff of the City of New York might commence an action or special proceeding prescribed in said Section 922, to collect, receive and enforce the debts, effects, things in action and property attached by him and that, by an order so made by said Court and entered on January 27, 1948, and duly served on the Federal Reserve Bank of New York on January 29, 1948, such time has been so extended to March 11, 1949.

14. That the warrant of attachment in said action brought by this respondent has never been vacated or modified nor has the attachment thereunder been released, discharged or otherwise annulled and that, by virtue of such attachment, this respondent has acquired a lien against, [fol. 68] and an interest and property right, in the funds, credits and property so attached and is entitled to require the same to be applied to the satisfaction of the judgments obtained by this respondent in his said action against the Reichsbank and that such lien, interest and property right of this respondent are prior and superior to the rights claimed by the petitioner in this action.

15. That, by virtue of the service of a certified copy of the warrant of attachment granted by the Supreme Court of the State New York, County of Kings, in the said action brought by this respondent by the Sheriff of New York County on December 11, 1941 on the respondent, Federal Reserve Bank of New York, the said Supreme Court of the State of New York acquired sole and exclusive jurisdiction and control of, and dominion over, the funds, credits and property attached and that the United States

District Courts have no jurisdiction or power to adjudicate with respect to, interfere with, or exercise authority or control over, such funds, credits or property or the jurisdiction and control of, and dominion over, the same acquired by and vested in the said Supreme Court of the State of New York.

16. That this respondent is a citizen of the United States and is entitled, under Section 8 of the Trading with the Enemy Act (40 Stat. 418; U. S. Code Title 50, Appendix, Section 8) to continue to have and enjoy his lien and security right in the funds, credits and property of the Reichsbank in the hands of the Federal Reserve Bank of New York which was effected by the service of the said certified copy of warrant of attachment on the Federal Reserve Bank on December 11, 1941 and to enforce such lien and security right, realize thereon, and satisfy the said judgments recovered by him against the Reichsbank out of the funds, credits and property so attached.

[fol. 69] 17. That the Treasury Department of the United States, in the administration of the "freezing" controls under Executive Order 8389, as amended, has recognized, consented to, and acquiesced in, unlicensed attachments against, and other judicial seizure of, blocked accounts as valid and effective and as creating valid and enforceable liens against such accounts and has issued licenses authorizing payment out of such blocked accounts in satisfaction of judgments obtained in actions begun by or involving such attachment against, or other judicial seizure of, such blocked accounts and that, by reason thereof, petitioner is estopped from questioning the validity or effect of the proceedings had in the said action brought by this petitioner and the judgment entered therein.

18. That, since the inception of "freezing" controls the Alien Property Custodian has recognized and acquiesced in the validity of attachments against blocked accounts of enemies of the United States and of the lien and superior right of the attaching creditor by making payment of judgments secured in attachment proceedings out of the enemy judgment-debtor's assets acquired by the Alien Property Custodian under a Vesting Order, notwithstanding that the attaching creditor had not procured a particular license authorizing the attachment and entry of

judgment and, by reason thereof, petitioner herein is estopped from impugning the validity of the proceedings had in the said action brought by this respondent against the Reichsbank and the Deutsche Golddiskontbank in the Supreme Court of the State of New York, County of Kings, the judgment entered therein and the prior lien and interest secured by this petitioner in the attached funds, credits and property in the hands of the respondent, the Federal Reserve Bank of New York.

19. That the Treasury Department of the United States, which was empowered to administer the "freezing" control [fol. 70] under Executive Order 8389, as amended, did, on December 11, 1941 and prior and subsequent thereto, authorize, acquiesce in and ratify the commencement of suits against blocked Nationals and the attachment, or other judicial seizure of funds, credits and property belonging to blocked Nationals; that, accordingly, the aforesaid action brought by this respondent against the Reichsbank and the Deutsche Golddiskontbank and the proceedings had therein were authorized, ratified and acquiesced in by the said Treasury Department; and that such authorization, acquiescence and ratification are binding on the petitioner and he is estopped thereby.

20. That a lien against, and property interest in, the funds, credits and property of the Reichsbank maintained with the Federal Reserve Bank of New York arose in favor of this respondent when the same were levied upon in the said action, pursuant to the warrant of attachment granted by the Supreme Court of the State of New York, County of Kings, and such lien and property interest are superior to the interest of the petitioner, if any, in said funds, credits and property and, accordingly, that this respondent is entitled to require that said funds, credits and property be applied to the satisfaction of his said judgment.

21. That the said judgment, entered in favor of this respondent on March 27, 1942, against the Reichsbank and the Deutsche Golddiskontbank in the said action in the Supreme Court of the State of New York, County of Kings, is a judgment *in rem* and is binding upon the said funds, credits and property levied upon, as aforesaid on December 11, 1941, as against the whole world, including the petitioner.

[fol. 71] 22. That the order prayed for by the petitioner, if granted wholly or in part, would contravene and deny to this respondent rights guaranteed to him by the Constitution of the United States.

Wherefore, the respondent, Zittman, prays that the petition herein be dismissed.

Joseph M. Cohen, Attorney for Respondent, Leo Zittman, 36 West 44th Street, New York 18, N. Y.

(Verified by Joseph M. Cohen, Feb. 24, 1948.)

[fol. 72] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AMENDED ANSWER OF RESPONDENT JOHN J. McCLOSKEY

The respondent, John J. McCloskey, as Sheriff of the City of New York, for his amended answer to the petition herein respectfully alleges:

1. The respondent Sheriff of the City of New York adopts as his answer the allegations contained in the answers to the petition herein respectively submitted by the respondents Leo Zittman and John F. McCarthy, said allegations being incorporated herein by reference with the same force and effect as if fully set forth at length herein.

Wherefore, the respondent Sheriff of the City of New York prays:

1. That the petition herein be dismissed.
2. That if the Court determines that the petitioner is entitled to possession of the property attached by the Sheriff pursuant to the Zittman and McCarthy attachments any decree to be entered thereon should provide for the payment of the Sheriff's statutory poundage fees arising from said attachments and for such other and further relief as the Court may deem just.

Sidney Posner, Attorney for Respondent John J. McCloskey, as Sheriff of the City of New York, Office and P. O. Address, 31 Chambers Street, New York 7, N. Y.

(Sworn to by H. William Kehl, Feb. 27, 1948.)

[fol. 73] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

TOM C. CLARK, Attorney General, as successor to the Alien
Property Custodian, Petitioner,

v.

FEDERAL RESERVE BANK OF NEW YORK, ET AL., Respondents
TOM C. CLARK, Attorney General, as successor to the Alien
Property Custodian, Petitioner,

v.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, ET AL.,
Respondents

STIPULATION

For the purposes of these causes, it is hereby Stipulated and Agreed as follows by and among the parties hereto, through their attorneys, subject to any objection with respect to materiality or relevancy which may hereafter be made by any party:

1. The motions of the respondent McCarthy for an order striking from the motion calendar petitioner's applications, for relief and directing that any and all further proceedings herein proceed in accordance with the procedure laid down in the Federal Rules of Civil Procedure be and the same hereby are withdrawn.

[fol. 74] 2. The following document, a photostatic copy of which is attached to this stipulation and marked Exhibit "A," is genuine, and the facts stated therein are true:

Letter, dated February 25, 1942, from the Attorney General of the United States, signed for him by Francis J. McNamara, Special Assistant to the Attorney General, Alien Property Division, addressed to Messrs. Katz & Sommerich.

3. On January 7, 1942, respondent Zittman caused to be mailed to the Attorney General of the United States at Washington, D. C., a copy of the summons and complaint in the action brought by Zittman in the Supreme Court of

the state of New York for the County of Kings against the Deutsche Reichsbank and the Deutsche Golddiskontbank, together with the notice and the order for service of summons by publication made in such action required by Rule 52 of the New York Rules of Civil Practice to be mailed to the Attorney General. Thereafter the Attorney General acknowledged receipt of said papers.

4. The following letter was sent on June 14, 1941, by Mr. D. W. Bell, Acting Secretary of the Treasury, to Mr. Januss Zoltowski, Financial Counsellor to the Polish Embassy, 14 Wall Street, New York, N. Y., and that the statements made therein reflected the policy of the Treasury Department:

Treasury Department,
Washington, June 14, 1941

Re: Commission for Polish Relief, Ltd. v. Banca Nazionale A. Romaniei.

Dear Sir: Reference is made to your conference on June 6, 1941, with representatives of this Department relative to the above case and Executive Order No. 8389, as amended.

[fol. 75] This will confirm the advice furnished to you at such conference that in administering Executive Order No. 8389, as amended and the regulations issued thereunder, the Treasury Department does not attempt to limit the bringing of suits in the courts of the United States, or of any of the states. However, in no event may any payment be made from any blocked account affected by such Executive Order except pursuant to a license authorizing such action.

Very truly yours, D. W. Bell, Acting Secretary of the Treasury.

Mr. Januss Zoltowski, Financial Counsellor to the Polish Embassy, 14 Wall Street, New York, N. Y.

5. From the inception of "freezing" controls, all litigants who, prior to commencing attachment actions against funds belonging to blocked nationals, had requested the Secretary of the Treasury to license an attachment, or levy, received

from the Treasury Department a response of the following nature:

Under Executive Order No. 8389, as amended, and the Regulations issued thereunder, no attempt is made to limit the bringing of suits in the courts of the United States or of any of the States. However, should you secure a judgment against one of the parties referred to in your letter, which is a country covered by the Order, or a national thereof, a license would have to be secured before payment could be made from accounts in banking institutions within the United States in the name of such country or national.

[fol. 76] 6. From the inception of "freezing" controls, the Secretary of the Treasury in administering the "freezing" control program adopted the position, in response to numerous requests made of him, that the bringing of an action, the issuance of a warrant of attachment therein, and the levy thereunder upon blocked property found within the jurisdiction of the court which issued the warrant were not forbidden but that a license was required to be secured before payment could be made from the blocked account to satisfy any judgment recovered in such action.

7. The Treasury Department has at various times issued licenses authorizing payment out of a blocked account of a blocked national for the purpose of making payment on a judgment recovered in an action where a prior warrant of attachment was issued and levied upon the blocked account of a blocked national therein notwithstanding that a particular license to institute the action and levy the attachment was not procured by a plaintiff and judgment-creditor. A license to institute the action and levy the attachment was in fact not required by the Treasury Department.

8. Following a judgment obtained by one Metallo-Chemical Corporation against a blocked national in an action in a New York court where a warrant of attachment was issued and levied upon a blocked account without first procuring from the Treasury Department a license to institute the action and to procure and levy the warrant of attachment therein, the Treasury Department issued license No. NY-

704109-T, a copy of which is attached hereto and marked Exhibit "B."

9. On December 22, 1941, without license from the Treasury Department, a warrant of attachment was issued in an action in a New York State court instituted by Murray Oil Products Co., Inc., against Mitsui & Co., Ltd., the [fol. 77] bank balances of Mitsui & Co., Ltd., with the National City Bank and Chase National Bank were attached pursuant to the warrant of attachment and a judgment was thereafter entered in favor of Murray Oil Products Co. against the debtor Mitsui & Co., Ltd. A license authorizing the issuance of the attachment was in fact not required by the Treasury Department. After the then Alien Property Custodian had issued, on August 17, 1942, Vesting Order No. 105 vesting in himself title to all property and assets of Mitsui & Co., Ltd., in the United States, and after the judgment became final, the Alien Property Custodian paid to the judgment-creditor an amount sufficient to satisfy the judgment.

10. In the plenary action brought by the respondent Zittman in the Supreme Court of the State of New York for the County of Kings against the Deutsche Reichsbank and the Deutsche Golddiskontbank, a certified copy of the warrant of attachment was served upon the Chase National Bank of the City of New York on December 11, 1941 at 2:41 o'clock P. M. Eastern Standard Time and on the Federal Reserve Bank of New York on December 11, 1941 at 2:20 o'clock P. M. Eastern Standard Time. The funds, credits and property against which said warrants of attachment were levied had been received and held by the respondents Chase National Bank and Federal Reserve Bank of New York prior to the commencement of the war with Germany.

11. The Attorney General of the United States did not appear and did not take any steps in the actions brought by respondents McCarthy and Zittman in the Supreme [fol. 78] Court of the State of New York for Kings County in which the warrants of attachment were issued.

Katz & Sommerich, Counsel for Respondent McCarthy, By: Henry I. Fillman; Joseph M. Cohen, Counsel for Respondent Zittman, John F. X. McGohey, United States Attorney, Counsel for Tom C. Clark,

Attorney General, Petitioner, By Lawrence H. Axman, Assistant United States Attorney, Thomas E. Harris.

[fol. 79] EXHIBIT A, ANNEXED TO STIPULATION

Department of Justice, Washington, D. C. msm
February 25, 1942

Address reply to "The Attorney General" and refer to initials and number FJMcN: JWC Jr. 9-100-017-268. Messrs. Katz & Sommerich, 120 Broadway, New York, New York.

Sirs:

This Department has received the following papers in the case of John F. McCarthy, plaintiff, against Reichsbank, defendant, now pending in the Supreme Court, Kings County, New York:

- (1) Notice pursuant to Rule 52 of the Rules of Civil Practice of New York;
- (2) Summons;
- (3) Complaint;
- (4) Affidavit in support of application for order of publication, with exhibits; and
- (5) Order for service of summons by publication.

[fol. 80] These papers were enclosed, without accompanying letter, in an envelope bearing your name and address, directed to the Attorney General of the United States.

Respectfully, For the Attorney General, Francis J. McNamara, Special Assistant to the Attorney General, Alien Property Division.

EXHIBIT B, ANNEXED TO STIPULATION

Treasury Department, Foreign Funds Control.

License No. N. Y. 704109-T, Date July 21, 1945.

License (Granted Under the Authority of Executive Order No. 8389 of April 10, 1940, as Amended, and the Regulations and Rulings Issued Thereunder).

To Gunther Jacobson (G.J. 7), Name of Licensee, 36 West 44th Street, New York 18, New York, Address of Licensee.

Sirs:

1. Pursuant to your application of June 11, 1945, the following transaction is hereby licensed:

The Irving Trust Company, New York City is hereby authorized to charge the account of Banque Transatlantique in Paris, France, \$3,705.44, plus interest, and pay that amount to the Sheriff of the City of New York, pursuant to the judgment obtained by Metallo-Chemical Corporation against Banque Transatlantique in Paris, France, dated April 23, 1941 to pay out the above funds as follows:

- (1) To himself for fees;
- (2) Balance to a domestic bank for credit to the blocked account of Metallo-Chemical Corporation.

2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the Regulations and Rulings issued thereunder and the terms of this license.

3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank through which the license was issued, the Postmaster at the place of mailing or the Collector of Customs at the port of exportation.

4. This license expires 30 days from the date of its issuance, is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation [fol. 82] on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secretary of the Treasury:

Federal Reserve Bank of New York, By (Illegible):

The Act of October 6, 1917, as amended, provides in part as follows:

“ * * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine; imprisonment or both.”

Note: If this license covers gold in any form the provisions of the Provisional Regulations issued under the Gold Reserve Act of 1934 must also be complied with. Original.

[fol. 83] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

OPINION BY BONDY, D. J.

Honorable John F. X. McGohey, by Laurence H. Axman, Esq. Tom E. Harris, Esq. and Lewis Haffer, Esq., for Honorable Tom C. Clark, Attorney General.

Messrs. Milbank Tweed, Hope & Hadley, by Timothy N. Pfeiffer, Esq. and Mrs. Rebecca M. Cutler, for The Chase National Bank of the City of New York.

Walter S. Logan, Esq., by Lyon Boston, Esq., for Federal Reserve Bank of New York.

Joseph M. Cohen, Esq., for Leo Zittman.

Sidney Posner, Esq., for John J. McCloskey, Jr. as Sheriff of the City of New York.

Messrs. Katz & Sommerich, by Henry I. Fillman, Esq., for John F. McCarthy.

BONDY, District Judge:

In one of the above entitled actions the Attorney General, as successor to the Alien Property Custodian, moves for a decree declaring that he is entitled to the possession of the balance remaining to the credit of the Deutsche Reichsbank on the books of the respondent Federal Reserve Bank of New York and in the other he moves for a decree declaring that respondents Zittman, McCarthy and McCloskey, as sheriff, did not obtain any lien or other interest in the Reichsbank-Direktorium or Deutsche Golddiskontbank accounts on the books of the respondent Chase National Bank, and that the petitioner is entitled to the balances remaining in such accounts. Both proceedings involve similar facts and similar questions of law. The motion papers disclose that there is not any dispute as to any of the material facts.

[fol. 84] In December, 1941, Zittman brought an action in the Supreme Court of the State of New York, Kings County, as against the Deutsche Reichsbank and Deutsche Golddiskontbank, German nationals, to recover money allegedly due him, and in January, 1942, McCarthy brought an action in the same court against the Deutsche Reichs-

bank to recover money allegedly due him. At the time of the commencement of these actions, respondent McClosky as sheriff purported to levy on the balance due upon the accounts of the German banks in the respondent banks pursuant to attachments issued by the courts. The state courts ordered service of the summonses by publication, and judgments by default were entered in favor of Zittman on March 27, 1942 and in favor of McCarthy on April 24, 1942.

The accounts had been blocked under freezing controls of Executive Order No. 8389, 5 F. R. 1400, as extended to nationals of Germany by Executive Order No. 8785, 6 F. R. 2897, effective June 14, 1941, 12 U. S. C. A. Section 95a note. No license or other authorization for the payment of the judgments out of the blocked accounts was obtained and the respondent banks did not pay to the respondent sheriff any part of the balance due on the deposit accounts of the German banks.

On October 3, 1946, the Alien Property Custodian by an order vested in himself the indebtedness owing to the Reichsbank from the Chase Bank and on October 14, 1946, by an order vested in himself the indebtedness owing to the Golddiskontbank from the Chase Bank. Subsequent demands for payments of such indebtedness to the Custodian were refused by the Chase Bank unless the warrants of attachment issued in the actions brought by Zittman and McCarthy were released.

On October 3, 1946, the Custodian by an order vested in himself the indebtedness owing to the Reichsbank from the Federal Reserve Bank. On demand the Federal Reserve Bank remitted to the Custodian the amount thereof less a sum withheld to cover the attachments in the Zittman and McCarthy actions.

By stipulation the objections to the procedure adopted by the Attorney General in these actions were withdrawn, and it was agreed that the Treasury Department from the inception of the freezing controls informed all litigants who, prior to the commencement of attachment actions against funds belonging to blocked nationals, had requested the Secretary of the Treasury to license an attachment that: "Under Executive Order No. 8389 as amended, and the Regulations issued thereunder, no attempt is made

to limit the bringing of suits in the courts of the United States or of any of the States. However, should you secure a judgment against one of the parties referred to in your letter, which is a country covered by the Order, or a national thereof, a license would have to be secured before payment could be made from accounts in banking institutions within the United States in the name of such country or national." It was also stipulated that the Treasury adopted the position that the bringing of an action, the issuance of a warrant of attachment therein and the levy thereunder upon blocked property found within the jurisdiction of the court which issued the warrant, were not forbidden, but that a license was required before payment could be made from the blocked account to satisfy any judgment recovered in such action, and that the Treasury Department has at various times issued a license authorizing payment out of a blocked account of a blocked national for the purpose of making payment on a judgment recovered in an action where a prior warrant of attachment was issued and levied upon the blocked account of a blocked national, notwithstanding that a license to institute the action and levy the attachment was not procured by a plaintiff and judgment creditor, and further that a license to institute such action and levy the attachment [fol. 86] was in fact not required by the Treasury Department and that the Attorney General did not appear and did not take any steps in the actions brought by respondents McCarthy and Zittman in the Supreme Court of the State of New York in which the warrants were issued, of which actions he was given notice in writing.

The respondents contend that the allegedly attached accounts are in the custody of the state court, that the petitioner seeks relief which would unlawfully interfere with that custody, that full faith and credit must be given to the state attachment proceedings, that the vesting of the property in the Custodian would result in the taking of property without due process of law and that accordingly the petitions must be dismissed.

Arguments similar to those urged in opposition to these motions were presented and considered in *Clark v. Prop- per*, 169 F. (2) 324, affirming *Markham v. Taylor*, 70 F. Supp. 202. In that case the Circuit Court affirmed an

order of Judge Coxe granting a motion for summary judgment in an action seeking a declaration that a permanent receiver for an Austrian cooperative society had no title to or interest in amounts owed to said society by an American association, notwithstanding that the receiver had been appointed to receive and reduce to his possession all the assets of the society by a New York State court judgment which, were it not for the fact that the accounts were blocked, would have vested all title to the property in the receiver, and notwithstanding that a suit brought by the receiver against the association to recover the sums allegedly due was pending in a New York State court. It was held that even if the subject matter of the controversy were in the custody of the state court, the federal court had jurisdiction to adjudicate the claim of the Custodian, *Markham v. Allen*, 326 U. S. 490, that Executive Order No. 8389, as amended, prohibiting the unlicensed transfer of an enemy alien's property, applies to transfers by judicial [fol. 87] process, and that the Order was properly interpreted by Treasury Department General Ruling No. 12, April 21, 1942, 7 F. R. 2991, and by Treasury Department Public Circular No. 31, August 2, 1946, 11 F. R. 8351, both of which declare that judicial process cannot, without a license or other authorization from the Secretary, create any interest in blocked property. The court reached its conclusion even though it also was urged that the proceedings in the federal court constituted failure to accord full faith and credit to a judgment of the state court and that the vesting of the property in the Custodian would result in a taking of property without due process of law.

The court considers itself bound by that decision which expressly disagreed with the decision in *Singer v. Yokohama Specie Bank*, 293 N. Y. 542, upon which respondents rely. *Polish Relief Comm. v. Banca Nationala A. Rumaniei*, 288 N. Y. 332, also relied on by respondents, states that Executive Order No. 8389 "must be taken to have deprived the defendant of power to transfer any interest in these blocked accounts except through the medium of assignment subject to a releasing of the credit by the Secretary of the Treasury. The United States as *amicus curiae* supported the attachment involved in that case as inoffensive to national policy. The United States how-

ever in the instant cases denies that any rights were acquired by virtue of the attachments. The fact that the Treasury Department advised prospective litigants that no license was necessary to bring suit and secure the issuance of a warrant of attachment does not estop the petitioner from taking this position since it is consistent with General Ruling No. 12(4) which specifically provides that while a transfer of blocked property shall be valid and enforceable for the purpose of determining for the parties to an action the rights and liabilities litigated, no attachment, judgment, or other judicial process shall confer any [fol. 88] greater interest in any blocked property than the owner of such property could create by voluntary act prior to the issuance of a license.

Because the attachments by the sheriff did not transfer any right, title or interest in the block property, his application for payment of his fees by the Custodian must be denied.

The Chase National Bank claims the right to set off against the Custodian's claims a contingent liability on a guaranty made by it for the account of the Reichsbank to the Irving Trust Company against loss arising from the payment by said trust company of a draft without presentation of the original and duplicate. The guaranty of the Chase Bank to Irving Trust Company does not create any banker's lien or set-off to the claim of the Custodian to the assets of the Reichsbank. See *Clark v. Manufacturers Trust Company*, decided by the Court of Appeals for the Second Circuit, August 5, 1948.

The Chase Bank also claims custodian fees accruing in connection with the Golddiskontbank's custody account. The Attorney General having consented to the deduction of the fees without conceding that they are deductible as a matter of right, it becomes unnecessary for the court to pass upon the claim for the allowance.

The motions accordingly are granted subject to the allowance of custodian fees pursuant to the consent of the petitioner.

October 1, 1948.

/s/ Wm. Bondy, United States District Judge.

[fol. 89] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

Civ. 44-618

TOM C. CLARK, Attorney General, as successor to the Alien
Property Custodian, Petitioner, —

FEDERAL RESERVE BANK OF NEW YORK, and JOHN J. McCLOSKEY, JR., as Sheriff of the City of New York, and
LEO ZITTMAN and JOHN F. MCCARTHY, Respondents

FINAL DECREE APPEALED FROM—January 13, 1949

This cause having come on for hearing on March 5 and March 17, 1948, before the Honorable William Bondy, District Judge, on order to show cause issued pursuant to the petition of Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, and the court having examined the pleadings, stipulations of fact, and other papers on file and having heard argument of counsel and being otherwise fully advised and satisfied in the premises and having rendered an opinion in writing dated October 1, 1948, now therefore, it is Ordered, Adjudged, Decreed and Declared:

I. That by virtue of Vesting Order No. 7794 and Turn-over Directive of October 14, 1946, the petitioner Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, became entitled to possession of those certain debts or obligations owing to Deutsche Reichsbank, also known as Reichsbank, and as Reichsbank-Direktorium, by Federal Reserve Bank of New York, New York, New York, arising out of bank accounts entitled, Reichs-[fol. 90] bank, Reichsbank Special Account, Reichsbank-Direktorium, Standstill Account 1938 No. 2, and Reichsbank-Direktorium, Standstill Account 1938 No. 3, in the total amount of \$1,003,382.78 and respondent Federal Reserve Bank of New York having previously delivered to the petitioner the sum of \$703,382.78 on account of said debts or obligations, the petitioner remains and is now entitled to the possession of the entire balance of said debts or ob-

ligations in the sum of \$300,000, together with all accrued dividends and accumulations, if any, as against the respondents, Federal Reserve Bank of New York, John J. McCloskey, Jr., as sheriff of the City of New York, Leo Zittman and John F. McCarthy.

II. That the application of John J. McCloskey, Jr., as sheriff of the City of New York, for payment of his fees be, and the same hereby is, denied.

III. That no costs be allowed to any party herein.

Dated: New York, New York, January 13th, 1949.

Wm. Bondy, U. S. D. J.

Judgment entered, William V. Connell, Clerk.

Jan 20 1949

[fol. 91] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

NOTICE OF APPEAL BY JOHN F. MCCARTHY—March 2, 1949

Sirs:

Notice Is Hereby Given that John F. McCarthy, one of the respondents above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the final decree dated January 13, 1949, and entered herein on January 20, 1949.

Dated, New York, N. Y., March 2, 1949.

Yours, etc., Katz & Sommerich, Attorneys for Respondent, John F. McCarthy, Office & P. O. Address: 120 Broadway, New York 5, N. Y.

[fol. 92] To:

John F. X. McGohey, Esq., United States Attorney, Attorney for Petitioner, United States Courthouse, Foley Square, New York, N. Y.

Walter S. Logan, Esq., Attorney for Respondent, Federal Reserve Bank of New York, 33 Liberty Street, New York 7, N. Y.

Sidney Posner, Esq., Attorney for the Respondent, John J. McCloskey, Jr., as Sheriff of the City of New York, Hall of Records, 31 Chambers Street, New York 7, N. Y.

Joseph M. Cohen, Esq., Attorney for Respondent, Leo Zittman, 36 West 44th Street, New York 18, N. Y.

Clerk of the United States District Court, Southern District of New York, United States Courthouse, Foley Square, New York, N. Y.

[fol. 93] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

NOTICE OF APPEAL BY LEO ZITTMAN—March 7, 1949

Sirs:

Notice Is Hereby Given that Leo Zittman, one of the respondents above named; hereby appeals to the United States Court of Appeals for the Second Circuit, from the final decree dated January 13, 1949, and entered herein on January 20, 1949.

Dated, New York, N. Y., March 7, 1949.

Yours, etc., Joseph M. Cohen, Attorney for Respondent, Leo Zittman, Office & P. O. Address: 36 West 44th Street, New York 18, N. Y.

[fol. 94] To:

John F. X. McGohey, Esq., United States Attorney, Attorney for Petitioner, United States Courthouse, Foley Square, New York, N. Y.

Walter S. Logan, Esq., Attorney for Respondent, Federal Reserve Bank of New York, 33 Liberty Street, New York 7, N. Y.

Sidney Posner, Esq., Attorney for the Respondent, John J. McCloskey, Jr., as Sheriff of the City of New York, Hall of Records, 31 Chambers Street, New York 7, N. Y.

Katz & Sommerich, Esqs., Attorneys for Respondent, John F. McCarthy, 120 Broadway, New York 5, N. Y.

Clerk of the United States District Court, Southern District of New York, United States Courthouse, Foley Square, New York, N. Y.

[fol. 95] UNITED STATES DISTRICT COURT. SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

NOTICE OF APPEAL BY JOHN J. McCLOSKEY—March 11, 1949

Sirs:

Notice Is Hereby Given that John J. McCloskey, as Sheriff of the City of New York, one of the respondents above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the final decree dated January 13, 1949, and entered herein on January 20, 1949.

Dated, New York, N. Y., March 11, 1949.

Yours, etc., Sidney Posner, Attorney for Respondent, John J. McCloskey, as Sheriff of the City of New York, Office & P. O. Address: Hall of Records, 31 Chambers Street, New York 7, N. Y.

[fol. 96] To:

John F. X. McGohey, Esq., United States Attorney, Attorney for Petitioner, United States Courthouse, Foley Square, New York, N. Y.

Walter S. Logan, Esq., Attorney for Respondent, Federal Reserve Bank of New York, 33 Liberty Street, New York 7, N. Y.

Joseph M. Cohen, Esq., Attorney for Respondent, Leo Zittman, 36 West 44th Street, New York 18, N. Y.

Katz & Sommerich, Esqs., Attorneys for Respondent, John F. McCartay, 120 Broadway, New York 5, N. Y.

Clerk of the United States District Court, Southern District of New York, United States Courthouse, Foley Square, New York, N. Y.

[fol. 97] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

[Title omitted]

STIPULATION AS TO RECORD

It Is Hereby Stipulated and Agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties to the appeals herein, the Federal Reserve Bank of New York not having appealed from the decree dated January 13, 1949 and the time within which to appeal having expired.

Dated, New York, N. Y., October 28, 1949.

John F. X. McGohey, Attorney for Petitioner-Appellee, Sidney Posner, Attorney for Respondent-Appellant, John J. McCloskey, Jr., Joseph M. Cohen, Attorney for Respondent-Appellant, Leo Zittman, Katz & Sommerich, Attorneys for Respondent-Appellant, John F. McCarthy.

[fol. 98] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 99] UNITED STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT

Nos. 207-208—October Term, 1949

(Argued May 9, 1950. Decided June 2, 1950)

Docket Nos. 21620 and 21621

J. HOWARD McGRATH, Attorney General, as successor to the
Alien Property Custodian, Petitioner-Appellee,

v.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, and
JOHN J. McCLOSKEY, JR., as Sheriff of the City of New
York, and LEO ZITTMAN and JOHN F. MCCARTHY, Re-
spondents-Appellants,

J. HOWARD McGRATH, Attorney General, as successor to the
Alien Property Custodian, Petitioner-Appellee,

v.

FEDERAL RESERVE BANK OF NEW YORK, and JOHN J. McCLOS-
KEY, JR., as Sheriff of the City of New York, and LEO
ZITTMAN and JOHN F. MCCARTHY, Respondents-Appel-
lants

PER CURIAM OPINION—June 2, 1950

Before: SWAN, Augustus N. Hand and Chase, Circuit
Judges.

Appeals from the United States District Court for the
Southern District of New York

Joseph M. Cohen, Attorney for Appellant Zittman.
Katz & Sommerich, Attorneys for Appellant McCar-
thy; Henry I. Fillman and Otto C. Sommerich, of
counsel.

Sidney Posner, Attorney for Appellant McCloskey.
Harold I. Baynton, Acting Director, Office of Alien
Property; Irving H. Saypol, United States Attor-
ney, James L. Morrisson and Ralph S. Spritzer,
Attorneys, Department of Justice, Washington,
D. C.; for Appellee.

[fol. 100] Per CURIAM:

Decrees of the District Court, 82 F. Supp. 740, affirmed as to appellants Zittman and McCarthy on the authority of *Propper v. Clark*, 337 U. S. 472, and as to appellant Sheriff of the City of New York on the ground stated in the opinion below.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand,
Hon. Harrie B. Chase, Circuit Judges.

J. HOWARD McGRATH, Attorney General, etc., Petitioner-
Appellee,

v.

CHASE NATIONAL BANK OF N. Y. & JOHN J. McCLOSKEY, JR.,
as Sheriff, et al., Respondents-Appellees

JUDGMENT—June 2, 1950

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

/s/ Alexander M. Bell, Clerk.

[Endorsed:] United States Court of Appeals, Second Circuit. J. Howard McGrath, Attorney General v. Chase National Bank of N. Y. & J. J. McCloskey, as Sheriff, et al. Judgment. United States Court of Appeals, Second Circuit. Filed June 2, 1950. Alexander M. Bell, Clerk.

[fols. 101-107] UNITED STATES COURT OF APPEALS, SECOND
CIRCUIT

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand,
Hon. Harrie B. Chase, Circuit Judges.

J. HOWARD McGRATH, Attorney General, etc., Petitioner-
Appellee,

v.

FEDERAL RESERVE BANK OF NEW YORK, & JOHN J. McCLOS-
KEY, JR., as Sheriff, et al., Respondents-Appellants

JUDGMENT—June 2, 1950

Appeal from the District Court of the United States for
the Southern District of New York.

This cause came on to be heard on the transcript of rec-
ord from the District Court of the United States for the
Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, ad-
judged, and decreed that the decree of said District Court
be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said
District Court in accordance with this decree.

/s/ Alexander M. Bell, Clerk.

[Endorsed:] United States Court of Appeals, Second
Circuit. J. Howard McGrath, Attorney General, etc., v.
Federal Reserve Bank of N. Y. & J. J. McCloskey, as
Sheriff, et al. Judgment. United States Court of Appeals,
Second Circuit. Filed June 2, 1950. Alexander M. Bell,
Clerk.

[fols. 108-117] PETITION OF APPELLANT MCCARTHY FOR
REHEARING—Filed June 16, 1950, omitted in printing

[fols. 118-120] APPELLANT SHERIFF'S PETITION FOR REHEAR-
ING—Filed June 16, 1950, omitted in printing

[fol. 121] UNITED STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT

J. HOWARD McGRATH, Attorney General, as Successor to the
Alien Property Custodian, Petitioner-Appellee,

v.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, and JOHN
J. McCLOSKEY, JR., as Sheriff of the City of New York,
and LEO ZITTMAN and JOHN F. MCCARTHY, Respondents-
Appellants

J. HOWARD McGRATH, Attorney General, as successor to the
Alien Property Custodian, Petitioner-Appellee,

v.

FEDERAL RESERVE BANK OF NEW YORK, and JOHN J. McCLOS-
KEY, JR., as Sheriff of New York City, and LEO ZITTMAN &
JOHN F. MCCARTHY, Respondents-Appellants

Before: Swan, Augustus N. Hand and Chase, Circuit
Judges.

ORDER DENYING PETITIONS FOR REHEARING—June 27, 1950
Joseph M. Cohen, Attorney for Appellant Zittman.

Katz & Sommerich, Attorneys for Appellant McCarthy.
Sidney Posner, Attorney for appellant McCloskey.

Per CURIAM:

Petitions for rehearing denied.

T.W.S., A.N.H., H.B.C., C. J.J.

[Endorsed:] United States Court of Appeals, Second
Circuit. Filed June 27, 1950. Alexander M. Bell, Clerk.

[fol. 122] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

J. HOWARD McGRATH, etc., Petitioner-Appellee,

v.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, JOHN J. McCLOSKEY, JR., as Sheriff, et al., Respondents-Appellants

J. HOWARD McGRATH, etc., Petitioner-Appellee,

v.

FEDERAL RESERVE BANK OF NEW YORK, et al., Respondents-Appellants

ORDER DENYING PETITIONS FOR REHEARING—June 27, 1950

Petitions for a rehearing having been filed herein by counsel for the appellants Zittman, McCarthy & McCloskey,

Upon consideration thereof, it is

Ordered that said petitions be and hereby are denied.

(s.) Alexander M. Bell, Clerk.

[Endorsed:] United States Court of Appeals, Second Circuit. J. Howard McGrath, etc., v. Chase National Bank of the City of N. Y., et al. J. Howard McGrath, etc., v. Federal Reserve Bank of New York, et al. Order. United States Court of Appeals, Second Circuit. Filed June 27, 1950. Alexander M. Bell, Clerk.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 123] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1950

No. 298

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1950

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 124] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1950

No. 299

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1950

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 125] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1950

No. 314

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1950

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 126] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1950

No. 315

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1950

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 127] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1950

No. 324

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1950

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1591)